

## 1 HOUSE BILL NO. 754

2 INTRODUCED BY D. BARRETT

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ENVIRONMENTAL REVIEW REQUIREMENTS OF  
5 THE MONTANA ENVIRONMENTAL POLICY ACT; ELIMINATING THE REQUIREMENT THAT A STATE  
6 AGENCY CONDUCT AN ENVIRONMENTAL REVIEW UNLESS THE STATE AGENCY IS ACTING AS A  
7 PROJECT SPONSOR; REQUIRING THAT A PROJECT SPONSOR CONDUCT THE ENVIRONMENTAL  
8 REVIEW; CLARIFYING AND ELIMINATING CERTAIN ENVIRONMENTAL REVIEW PROVISIONS;  
9 PROHIBITING A COURT FROM ENJOINING, RESTRAINING, OR IMPACTING A STATE AGENCY'S  
10 PERMITTING PROCESS BASED ON A CHALLENGE TO A PROJECT SPONSOR'S ENVIRONMENTAL  
11 REVIEW; ELIMINATING ENVIRONMENTAL REVIEW FEES; AMENDING SECTIONS 37-72-101, 75-1-201,  
12 75-1-220, 75-2-211, 75-2-212, 75-2-215, 75-2-218, 75-2-231, 75-5-401, 75-5-803, 75-10-715, 75-10-735,  
13 75-10-922, 75-20-215, 75-20-216, 75-20-223, 75-20-231, 76-4-125, 77-1-121, 77-2-363, 77-5-201, 77-5-208,  
14 77-5-212, 82-4-122, 82-4-231, 82-4-232, 82-4-250, 82-4-335, 82-4-337, 82-4-342, 85-2-123, 85-2-141, 85-2-310,  
15 85-2-311, 85-2-316, 85-2-402, 85-3-202, AND 90-6-307, MCA; REPEALING SECTIONS 75-1-202, 75-1-203,  
16 75-1-204, 75-1-205, 75-1-206, 75-1-207, 75-1-208, AND 85-2-124, MCA; AND PROVIDING AN IMMEDIATE  
17 EFFECTIVE DATE AND AN APPLICABILITY DATE."

18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20

21 **Section 1.** Section 37-72-101, MCA, is amended to read:22 **"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1)**23 A person may not engage in the practice of construction blasting unless licensed or under the supervision of a  
24 person licensed as a construction blaster by the department.

25 (2) For the purposes of this chapter:

26 (a) "construction blaster" means a person who engages in construction blasting;

27 (b) "construction blasting" means the use of explosives to:

28 (i) reduce, destroy, or weaken any residential, commercial, or other building; or

29 (ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any  
30 land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

1 (c) "department" means the department of labor and industry;

2 (d) "explosive" has the meaning provided in 61-9-102.

3 (3) This chapter does not apply to the private or commercial use of explosives by persons engaged in  
4 farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any  
5 kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using  
6 the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules  
7 adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted  
8 person.

9 (4) This chapter does not apply to persons conducting blasting operations when the persons and  
10 operations are subject to rules adopted under ~~82-4-231(10)(e)~~ 82-4-231(9)(e)."

11

12 **Section 2.** Section 75-1-201, MCA, is amended to read:

13 **"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes  
14 and directs that, to the fullest extent possible:

15 (a) the policies, regulations, and laws of the state must be interpreted and administered in accordance  
16 with the policies set forth in parts 1 through 3;

17 (b) under this part, all ~~agencies of the project sponsors applying for a permit or other state authority to~~  
18 act, including all state agencies acting as a project sponsor covered by this part, except the legislature and except  
19 as provided in subsection (2), shall, for any environmental impacts not otherwise addressed by a state agency  
20 as a part of that agency's statutory permitting authority:

21 (i) use a systematic, interdisciplinary approach that will ensure:

22 (A) the integrated use of the natural and social sciences and the environmental design arts in planning  
23 and in decisionmaking that may have an impact on the human environment; and

24 (B) that in any environmental review that is not subject to subsection ~~(1)(b)(iv)~~ (1)(b)(iii), when ~~an agency~~  
25 a project sponsor considers alternatives, the alternative analysis will be in compliance with the provisions of  
26 ~~subsections (1)(b)(iv)(C)(i) through (1)(b)(iv)(C)(iii) and, if requested by the project~~  
27 subsection (1)(b)(iii)(C)(i) through (1)(b)(iv)(C)(iii) and, if requested by the project  
~~sponsor or if determined by the agency to be necessary, subsection (1)(b)(iv)(C)(iv);~~

28 (ii) identify and develop methods and procedures that will ensure that presently unquantified  
29 environmental amenities and values may be given appropriate consideration in decisionmaking, along with  
30 economic and technical considerations;

1           ~~(iii) identify and develop methods and procedures that will ensure that state government actions that may~~  
 2 ~~impact the human environment are evaluated for regulatory restrictions on private property, as provided in~~  
 3 ~~subsection (1)(b)(iv)(D);~~

4           ~~(iv)(iii) include in each recommendation or report on proposals for projects; and programs; and other~~  
 5 ~~major actions of state government significantly affecting the quality of the human environment a detailed~~  
 6 ~~statement on:~~

7           (A) the environmental impact of the proposed action;

8           (B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

9           (C) reasonable alternatives to the proposed action. ~~An analysis of any alternative included in the~~  
 10 ~~environmental review must comply with the following criteria:~~

11 ~~———(I) any alternative proposed must be reasonable, in that the alternative must be that are achievable under~~  
 12 ~~current technology and the alternative must be that are economically feasible as determined solely by the~~  
 13 ~~economic viability for similar projects having similar conditions and physical locations and determined without~~  
 14 ~~regard to the economic strength of the specific project sponsor;\_~~

15           ~~(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed~~  
 16 ~~alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding~~  
 17 ~~the proposed alternative;~~

18 ~~———(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection~~  
 19 ~~(1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's~~  
 20 ~~determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion,~~  
 21 ~~submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project~~  
 22 ~~sponsor for any of its activities associated with any review under this section. The period of time between the~~  
 23 ~~request for a review and completion of a review under this subsection may not be included for the purposes of~~  
 24 ~~determining compliance with the time limits established for environmental review in 75-1-208.~~

25           ~~(IV) the agency~~ The project sponsor shall complete a meaningful no-action alternative analysis. The  
 26 no-action alternative analysis must include the projected beneficial and adverse environmental, social, and  
 27 economic impact of the project's noncompletion.

28           ~~(D) any regulatory impacts on private property rights, including whether alternatives that reduce,~~  
 29 ~~minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this~~  
 30 ~~subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private~~

1 property.

2 (E)(D) the relationship between local short-term uses of the human environment and the maintenance  
3 and enhancement of long-term productivity;

4 (F)(E) any irreversible and irretrievable commitments of resources that would be involved in the proposed  
5 action if it is implemented; and

6 (G)(F) the details of the beneficial aspects of the proposed project, both short-term and long-term, and  
7 the economic advantages and disadvantages of the proposal; and

8 (v)(iv) in accordance with the criteria set forth in subsection (1)(b)(iv)(C) (1)(b)(iii)(C), study, develop, and  
9 describe appropriate alternatives to ~~recommend~~ proposed courses of action in any proposal that involves  
10 unresolved conflicts concerning alternative uses of available resources;

11 (vi) ~~recognize the national and long-range character of environmental problems and, when consistent~~  
12 ~~with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to~~  
13 ~~maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;~~

14 ~~———(vii) make available to counties, municipalities, institutions, and individuals advice and information useful~~  
15 ~~in restoring, maintaining, and enhancing the quality of the environment;~~

16 ~~———(viii) initiate and use ecological information in the planning and development of resource-oriented~~  
17 ~~projects; and~~

18 ~~———(ix) assist the environmental quality council established by 5-16-101;~~

19 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv) (1)(b)(iii), the ~~responsible~~  
20 ~~state official~~ project sponsor shall consult with and obtain the comments of any state agency that has jurisdiction  
21 by law or special expertise with respect to any environmental impact involved and with any local government, as  
22 defined in 7-12-1103, that may be directly impacted by the project. ~~The responsible state official shall also consult~~  
23 ~~with and obtain comments from any state agency with respect to any regulation of private property involved.~~

24 Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that  
25 are authorized to develop and enforce environmental standards must be made available to the governor, the  
26 environmental quality council, and the public and must accompany the ~~proposal~~ permit application through the  
27 existing agency review processes.

28 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use  
29 or permission to act by an agency, either singly or in combination with other state agencies, does not trigger  
30 review under subsection (1)(b)(iv) (1)(b)(iii) if there is not a material change in terms or conditions of the

1 entitlement or unless otherwise provided by law.

2 (2) The department of public service regulation, in the exercise of its regulatory authority over rates and  
3 charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

4 (3) (a) In any action challenging or seeking review of an ~~agency's decision~~ environmental review,  
5 including a project sponsor's finding that a statement pursuant to subsection ~~(1)(b)(iv)~~ (1)(b)(iii) is not required  
6 or that the statement or other environmental review is inadequate, the burden of proof is on the person  
7 challenging the ~~decision finding or review~~. Except as provided in subsection (3)(b), in a challenge to the adequacy  
8 of ~~a statement~~ an environmental review, a court may not consider any issue relating to the adequacy or content  
9 of the ~~agency's~~ project sponsor's environmental review document or evidence that was not first presented or  
10 otherwise reasonably available to the ~~agency for the agency's~~ project sponsor for the project sponsor's  
11 consideration prior to the ~~agency's decision~~ completion of the environmental review. A court may not set aside  
12 the ~~agency's decision~~ project sponsor's environmental review unless it finds that there is clear and convincing  
13 evidence that the ~~decision~~ preparation of the review was arbitrary or capricious or not in compliance with law.

14 (b) When new, material, and significant evidence or issues relating to the adequacy or content of the  
15 ~~agency's~~ project sponsor's environmental review document are presented to the district court that had not  
16 previously been presented to or that were not otherwise reasonably available to the agency project sponsor for  
17 its consideration, the district court shall remand the new evidence or issue relating to the adequacy or content  
18 of the ~~agency's~~ environmental review document back to the agency project sponsor for the ~~agency's~~ project  
19 sponsor's consideration and an opportunity to modify its findings ~~of fact and administrative decision~~ before the  
20 district court considers the evidence or issue relating to the adequacy or content of the ~~agency's~~ environmental  
21 review document ~~within the administrative record under review~~. Immaterial or insignificant evidence or issues  
22 relating to the adequacy or content of the ~~agency's~~ environmental review document may not be remanded to the  
23 agency project sponsor. The district court shall review the ~~agency's~~ project sponsor's findings ~~and decision~~ to  
24 determine whether they are supported by substantial; and credible evidence ~~within the administrative record~~  
25 ~~under review~~.

26 (4) ~~To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent~~  
27 ~~with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an~~  
28 ~~environmental review that is being prepared by a state agency pursuant to this part and a federal agency~~  
29 ~~pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a state~~  
30 ~~agency to comply with the requirements of the National Environmental Policy Act.~~

1           ~~(5)~~(4) (a) ~~The~~ A permitting agency may not withhold, deny, or impose conditions on any permit or other  
2 authority to act based on parts 1 through 3 of this chapter.

3           (b) Nothing in this subsection ~~(5)~~ (4) prevents a project sponsor and an agency from mutually developing  
4 measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

5           (c) Parts 1 through 3 of this chapter do not confer authority to an agency that is a project sponsor to  
6 modify a proposed project or action.

7           ~~(6)~~(5) (a) (i) A challenge to ~~an agency action~~ a project sponsor's environmental review under this part  
8 may ~~only~~ be brought against a ~~final agency action~~ and may ~~only~~ be brought only the project sponsor and may be  
9 brought in district court or in federal court, whichever is appropriate.

10           (ii) Any action or proceeding challenging a ~~final agency action~~ a project sponsor's environmental review  
11 alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within  
12 60 days of the ~~action that is the subject of the challenge~~ from the date that the project sponsor submits a complete  
13 permit application, including the environmental review to the permitting agency.

14           (iii) For an ~~action taken~~ environmental review prepared by the board of land commissioners or the  
15 department of natural resources and conservation under Title 77, "final agency action" means the date that the  
16 board of land commissioners or the department of natural resources and conservation issues a final  
17 environmental review document under this part or the date that the board approves the action that is subject to  
18 this part, whichever is later.

19           (b) Any action or proceeding under subsection ~~(6)(a)(ii)~~ (5)(a)(ii) must take precedence over other cases  
20 or matters in the district court unless otherwise provided by law.

21           (c) A court may not enjoin, restrain, or otherwise impact a state agency's permitting process based on  
22 an action or proceeding challenging the adequacy of a project sponsor's environmental review or other  
23 compliance with this part.

24           ~~(7) The director of the agency responsible for the determination or recommendation shall endorse in~~  
25 ~~writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a~~  
26 ~~determination of significance be made.~~

27           ~~(8) A project sponsor may request a review of the significance determination or recommendation made~~  
28 ~~under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an~~  
29 ~~advisory recommendation to the agency regarding the issue. The period of time between the request for a review~~  
30 ~~and completion of a review under this subsection may not be included for the purposes of determining compliance~~

1 with the time limits established for environmental review in 75-1-208."

2

3 **Section 3.** Section 75-1-220, MCA, is amended to read:

4 **"75-1-220. Definitions.** For the purposes of this part, the following definitions apply:

5 (1) "Appropriate board" means, for administrative actions taken under this part by the:

6 ~~—— (a) department of environmental quality, the board of environmental review, as provided for in 2-15-3502;~~

7 ~~—— (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided for in~~

8 ~~2-15-3402;~~

9 ~~—— (c) department of transportation, the transportation commission, as provided for in 2-15-2502;~~

10 ~~—— (d) department of natural resources and conservation for state trust land issues, the board of land~~  
 11 ~~commissioners, as provided for in Article X, section 4, of the Montana constitution;~~

12 ~~—— (e) department of natural resources and conservation for oil and gas issues, the board of oil and gas~~  
 13 ~~conservation, as provided for in 2-15-3303; and~~

14 ~~—— (f) department of livestock, the board of livestock, as provided for in 2-15-3102.~~

15 ~~—— (2) "Complete application" means, for the purpose of complying with this part, an application for a permit,~~  
 16 ~~license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures~~  
 17 ~~required to be included with the application sufficient for the agency to approve the application under the~~  
 18 ~~applicable statutes and rules.~~

19 ~~(3)~~(1) "Cumulative impacts" means the collective impacts on the human environment of the proposed  
 20 action when considered in conjunction with other past, present, and future actions related to the proposed action  
 21 by location or generic type.

22 ~~(4)~~(2) "Environmental review" means any environmental assessment, environmental impact statement,  
 23 or other written analysis required under this part by a state agency project sponsor of a proposed action to  
 24 determine, examine, or document the effects and impacts of the proposed action on the quality of the human and  
 25 physical environment as required under this part.

26 ~~(5)~~(3) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing  
 27 an action that requires an environmental review. If the action involves state agency-initiated actions on state trust  
 28 lands, the term also includes each institutional beneficiary of any trust as described in The Enabling Act of  
 29 congress (approved February 22, 1899, 25 Stat. 676), as amended, the Morrill Act of 1862 (7 U.S.C. 301 through  
 30 308), and the Morrill Act of 1890 (7 U.S.C. 321 through 328).

1           ~~(6)~~(4) "Public scoping process" means any process to determine the scope of an environmental review."

2

3           **Section 4.** Section 75-2-211, MCA, is amended to read:

4           **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule  
5 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

6           (2) (a) Except as provided in ~~75-1-208(4)(b)~~, 75-2-234; and subsections (2)(b) and (2)(c) of this section,  
7 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any  
8 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air  
9 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator  
10 shall file with the department the appropriate permit application on forms available from the department.

11           (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file  
12 the permit application with the department no later than ~~January 3, 2006~~, or 60 days after the initial well  
13 completion date, ~~whichever is later~~. For purposes of this section, the initial well completion date for an oil or gas  
14 well facility is:

15           (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead  
16 equipment into lease tanks from the ultimate producing interval after casing has been run; and

17           (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of  
18 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

19           (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment  
20 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the  
21 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may  
22 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,  
23 installation, or operation of the facility.

24           (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas  
25 well facility during the time from the initial well completion date until the department's decision on the application  
26 is final.

27           (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the  
28 federal air permitting provisions of 42 U.S.C. 7475 or 7503.

29           (3) The permit program administered by the department pursuant to this section must include the  
30 following:

- 1 (a) requirements and procedures for permit applications, including standard application forms;
- 2 (b) requirements and procedures for submittal of information necessary to determine the location,  
3 quantity, and type of emissions;
- 4 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- 5 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
6 agencies, as appropriate;
- 7 (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- 8 (f) procedures for the transfer of permits;
- 9 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
10 department;
- 11 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
12 enforceable measures necessary to ensure compliance with those limitations and requirements;
- 13 (i) requirements and procedures for permit modification and amendment; ~~and~~
- 14 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations  
15 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the  
16 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the  
17 department in advance of each change in location; and
- 18 (k) requirements and procedures for the applicant to submit an environmental review as required under  
19 75-1-201.
- 20 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
21 quality permit system.
- 22 (5) Department approval of an application to transfer a portable emission source from one location to  
23 another is exempt from the provisions of 75-1-201(1).
- 24 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
25 appropriate applications.
- 26 (7) The department shall require that applications for permits be accompanied by any plans,  
27 specifications, and other information that it considers necessary, including an environmental review as required  
28 under 75-1-201.
- 29 (8) An application is not considered filed until the applicant has submitted all fees required under  
30 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)

1 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
 2 an application that the application is incomplete and fails to list the reasons why the application is considered  
 3 incomplete, the application is considered filed as of the date of the purported filing.

4 (9) (a) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires the~~  
 5 ~~preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter~~  
 6 ~~4, parts 1 through 3, the Except as provided in subsections (9)(b) through (9)(f), the department shall notify the~~  
 7 applicant in writing of the approval or denial of the application:

8 ~~———(i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if~~  
 9 ~~the department prepares the environmental impact statement;~~

10 ~~———(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state~~  
 11 ~~agency other than the department has been designated by the governor as lead agency for preparation of the~~  
 12 ~~environmental impact statement; or~~

13 ~~(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a~~  
 14 ~~permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact~~  
 15 ~~statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.~~

16 (b) If an application ~~does not require the preparation of an environmental impact statement~~, is not subject  
 17 to the provisions of 75-2-215; and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475,  
 18 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed  
 19 application, as provided in subsection (8), of its approval or denial of the application, except as provided in  
 20 subsection (14).

21 (c) If an application ~~does not require the preparation of an environmental impact statement~~ and is subject  
 22 to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant,  
 23 in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or  
 24 denial of the application.

25 (d) Except as provided in subsection (9)(e), if an application ~~does not require the preparation of an~~  
 26 ~~environmental impact statement~~ and is subject to the provisions of 75-2-215, the department shall notify the  
 27 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application,  
 28 as provided in subsection (8).

29 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that is  
 30 also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall

1 ~~prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under~~  
2 ~~this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within~~  
3 the time period provided for in ~~75-2-215(3)(e)~~ 75-2-215(3)(d).

4 (f) The time for notification may be extended for 30 days by written agreement of the department and  
5 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.  
6 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's  
7 agent.

8 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
9 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
10 the department to act in a timely manner.

11 (10) When the department approves or denies the application for a permit under this section, a person  
12 who is jointly or severally adversely affected by the department's decision may request a hearing before the board  
13 alleging noncompliance with the provisions of this chapter. The request for hearing must be filed within 15 days  
14 after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within  
15 30 days after the department renders its decision. The contested case provisions of the Montana Administrative  
16 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

17 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the date  
18 of the decision.

19 (b) The filing of a request for hearing does not stay the department's decision. However, the board may  
20 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

21 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

22 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
23 requesting the stay.

24 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting  
25 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board  
26 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same  
27 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

28 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
29 draft air quality permits for applications that:

30 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661; or

1 (b) are subject to the requirements of 75-2-215; or  
 2 ~~\_\_\_\_\_ (c) require the preparation of an environmental impact statement.~~

3 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on  
 4 draft air quality permits not subject to subsection (12).

5 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

6 (a) the period as provided in subsection (13) in which the public may submit comments on draft air quality  
 7 permits not subject to subsection (12); and

8 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as  
 9 provided in subsection (9)(b).

10 (15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
 11 creation of:

12 (i) general permits covering multiple similar sources; or

13 (ii) other permits covering multiple similar sources.

14 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the  
 15 permit upon authorization by the department or upon notice to the department."  
 16

17 **Section 5.** Section 75-2-212, MCA, is amended to read:

18 **"75-2-212. Variances -- renewals -- filing fees.** (1) A person who owns or is in control of a plant,  
 19 building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules  
 20 governing the quality, nature, duration, or extent of emissions of air pollutants. The application ~~shall~~ must be  
 21 accompanied by ~~such~~ information and data ~~as~~ that the board may require. The board may grant an exemption  
 22 or partial exemption if it finds that:

23 (a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety;  
 24 and

25 (b) compliance with the rules from which exemption is sought would produce hardship without equal or  
 26 greater benefits to the public.

27 (2) ~~No~~ An exemption or partial exemption may not be granted pursuant to this section except after public  
 28 hearing on due notice and until the board has considered the relative interests of the applicant, other owners or  
 29 property likely to be affected by the emissions, and the general public.

30 (3) The exemption or partial exemption may be renewed if ~~no~~ a complaint is not made to the board

1 because of it or if, after the complaint has been made and ~~duly~~ considered at a public hearing held by the board  
 2 on due notice, the board finds that renewal is justified. ~~No~~ A renewal may not be granted except ~~on~~ upon  
 3 application ~~therefor~~. An application ~~shall~~ must be made at least 60 days before the expiration of the exemption  
 4 or partial exemption. Immediately before application for renewal, the applicant shall give public notice of ~~his~~ the  
 5 application in accordance with rules of the board. A renewal pursuant to this subsection ~~shall~~ must be on the  
 6 same grounds and subject to the same limitations and requirements as provided in subsection (1).

7 (4) An exemption, partial exemption, or renewal ~~thereof~~ of an exemption is not a right of the applicant  
 8 or holder ~~thereof~~ of an exemption but ~~shall~~ must be granted at the discretion of the board. However, a person  
 9 adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review  
 10 ~~thereof~~ of the exemption as provided by 75-2-411.

11 (5) ~~Nothing in this~~ This section and ~~no~~ an exemption, partial exemption, or renewal granted pursuant to  
 12 this section may not be construed to prevent or limit the application of the emergency provisions and procedures  
 13 of 75-2-402 to a person or ~~his~~ the person's property.

14 (6) A person who owns or is in control of a plant, building, structure, process, or equipment, ~~(hereinafter~~  
 15 ~~called~~ referred to as a facility), who applies to the board for an exemption or partial exemption or a renewal of an  
 16 exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air  
 17 pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the  
 18 equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater,  
 19 but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of ~~this~~  
 20 ~~shall~~ actual costs must be returned to the applicant. The person requesting the variance shall describe the facility  
 21 in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to  
 22 determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if  
 23 ~~no~~ a public hearing, environmental impact statement, or appreciable investigation by the department is ~~necessary~~  
 24 unnecessary, the minimum filing fee ~~shall~~ must apply or the fee may be waived by the department. The filing fee  
 25 ~~shall~~ must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature  
 26 that the ~~revenues~~ revenue derived from the filing fees ~~shall~~ must be used by the department to:

- 27 (a) compile the information required for rendering a decision on the request;  
 28 ~~(b) compile the information necessary for any environmental impact statements;~~  
 29 ~~(e)~~(b) offset the costs of a public hearing, printing, or mailing; and  
 30 ~~(d)~~(c) carry out its other responsibilities under this chapter."

1

2           **Section 6.** Section 75-2-215, MCA, is amended to read:

3           **"75-2-215. Solid or hazardous waste incineration -- additional permit requirements.** (1) Until the  
4 department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this  
5 section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or  
6 industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

7           (2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject  
8 to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel  
9 or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the  
10 nature, character, or composition of its emissions from its design or permitted operation.

11           (3) The department may not issue a permit to a facility described in subsection (1) until:

12           (a) the owner or operator has provided to the department's satisfaction:

13           (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air  
14 pollutants, from any existing emission source at the facility; and

15           (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air  
16 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler  
17 or industrial furnace, as proposed in the permit application or modification;

18           (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the  
19 applicant has published, in the county where the project is proposed, at least three notices, in accordance with  
20 the procedures identified in 7-1-4127, describing the proposed project;

21           ~~(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the~~  
22 ~~department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter~~  
23 ~~1, and, as appropriate, provided additional opportunities for the public to review and comment on the permit~~  
24 ~~application or modification;~~

25           ~~(d)~~(c) the department has reached a determination that the projected emissions and ambient  
26 concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment;  
27 and

28           ~~(e)~~(d) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if  
29 a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section  
30 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit

1 pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit  
2 alteration under 75-2-211 and this section, whichever is later.

3 (4) The department shall require the application of air pollution control equipment, engineering, or other  
4 operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants,  
5 equivalent to or more stringent than those achieved through the best available control technology.

6 (5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and  
7 this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial  
8 furnaces.

9 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a  
10 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit  
11 otherwise required under this chapter or rules implementing this chapter."  
12

13 **Section 7.** Section 75-2-218, MCA, is amended to read:

14 **"75-2-218. Permits for operation -- application completeness -- action by department -- application**  
15 **shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the  
16 department has determined that it is complete. An application is complete if all fees required under 75-2-220 and  
17 all information and completed application forms required under 75-2-217 have been submitted. A complete  
18 application must contain all of the information required for the department to begin processing the application.  
19 If the department fails to notify the applicant in writing within 60 days after submittal of an application that the  
20 application is incomplete and fails to list the reasons why the application is considered incomplete, the application  
21 is considered filed on the date of the department's receipt of the application. The department may request  
22 additional information after a completeness determination has been made. The board shall adopt rules that  
23 contain criteria for use in determining both when an application is complete and when additional information is  
24 required after a completeness determination has been made.

25 (2) Except as provided in ~~75-1-208(4)(b)~~ and subsection (3) of this section, the department shall,  
26 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an  
27 operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing.  
28 Failure of the department to act in a timely manner does not constitute approval or denial of the application. This  
29 does not limit or abridge the right of any person to seek available judicial remedies to require the department to  
30 act in a timely manner.

1           (3) The board may by rule provide for a transition schedule for both the submittal to the department of  
2 initial applications for operating permits by existing sources and action by the department on these initial permit  
3 applications. The board may require that one-third of all operating permit applications required for existing  
4 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit  
5 program under 75-2-217.

6           (4) If an applicant submits a timely and complete application for an operating permit, the applicant's  
7 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete  
8 application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a  
9 violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired  
10 operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant  
11 is not entitled to the protection of this subsection if the delay in final action by the department on the application  
12 results from the applicant's failure to submit in a timely manner information requested by the department to  
13 process the application.

14           (5) Except as provided in subsection (8), if the department approves or denies an application for an  
15 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any  
16 person that participated in the public comment process required under 75-2-217(7) may request a hearing before  
17 the board. The request for a hearing must be filed within 30 days after the department renders its decision and  
18 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
19 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

20           (6) (a) Except as provided in subsection (8), the department's decision on any application is not final until  
21 30 days have elapsed from the date of the decision.

22           (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's  
23 decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and  
24 opportunity for an informal hearing, that:

25           (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

26           (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
27 requesting the hearing.

28           (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting  
29 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board  
30 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same

1 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

2 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to  
3 suspend, revoke, modify, or amend an operating permit issued under this section.

4 (8) The denial by the department of an application under 75-2-217 and this section is not subject to  
5 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal  
6 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

7 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is  
8 considered to be compliance with the requirements of this chapter only if the permit expressly includes those  
9 requirements or an express determination that those requirements are not applicable. This subsection does not  
10 apply to general permits provided for under 75-2-217."

11

12 **Section 8.** Section 75-2-231, MCA, is amended to read:

13 **"75-2-231. Medical waste and hazardous waste incineration -- additional permit requirements. (1)**

14 Because of the potential emission of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of  
15 the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the  
16 board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial  
17 hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator"  
18 does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite.

19 The board shall adopt rules that:

20 (a) regulate the type and amount of plastic and other materials in the medical waste stream and  
21 hazardous waste stream that may be a source of chlorine, in order to minimize the potential emission of  
22 chlorinated dioxins, furans, and carcinogens;

23 (b) require commercial medical waste and commercial hazardous waste incinerators to achieve the  
24 lowest achievable emission rate to prevent the public health risk from air emissions or ambient concentrations  
25 from exceeding the negligible risk standard required by 75-2-215 and any applicable federal allowable intake  
26 standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other hazardous air  
27 pollutants;

28 (c) implement the requirements of subsection (2), including establishing procedures and standards for  
29 the collection of high-quality scientific information and for the submission of the information by the applicant;

30 (d) establish procedures for the monitoring, testing, and inspection of:

1 (i) the medical waste stream and hazardous waste stream, including heavy metals and possible  
2 precursors to the formation of chlorinated dioxins, furans, and carcinogens;  
3 (ii) combustion, including destruction and removal efficiencies; and  
4 (iii) emissions, including continuous emission monitoring and air pollution control devices; and  
5 (e) are necessary to implement the provisions of this section and to coordinate the requirements under  
6 this section with the requirements contained in 75-2-211 and 75-2-215.

7 (2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a  
8 commercial medical waste incinerator or commercial hazardous waste incinerator shall provide, to the satisfaction  
9 of the department, the following information:

10 (a) a dispersion model of emissions, using approved methods, and those studies that are necessary to  
11 identify the potential community exposure;

12 (b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated  
13 dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical  
14 contact by the affected communities; and

15 (c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans,  
16 heavy metals, and carcinogens for the affected communities.

17 (3) The department may not issue or alter an air quality permit pursuant to this chapter until the  
18 department has determined, based upon an analysis of the information provided by the applicant pursuant to  
19 subsection (2) and other necessary and relevant data, that the public health risk from air emissions or ambient  
20 concentrations of chlorinated dioxins, furans, heavy metals, and other hazardous air pollutants will not exceed  
21 the negligible risk standard required by 75-2-215 and any applicable federal standards for allowable intake, as  
22 determined by the department after a review of established and relevant federal standards and guidelines.

23 (4) This section may not be construed in any way to:

24 (a) require the board to promulgate standards for the allowable intake of any substances for which the  
25 federal government has not established standards;

26 (b) allow the board to promulgate standards for the allowable intake of any substances for which the  
27 federal government has established standards that are more stringent than the federal standards; or

28 (c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and  
29 ambient concentrations will constitute a negligible risk as required by ~~75-2-215(3)(d)~~ 75-2-215(3)(c), including  
30 emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air

1 quality permit pursuant to 75-2-211 and 75-2-215."

2

3 **Section 9.** Section 75-5-401, MCA, is amended to read:

4 **"75-5-401. Board rules for permits -- ground water exclusions.** (1) Except as provided in subsection  
5 (5), the board shall adopt rules:

6 (a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state  
7 waters, including rules requiring the filing of plans and specifications relating to the construction, modification,  
8 or operation of disposal systems and including rules regarding the submission of environmental reviews as  
9 required under 75-1-201;

10 (b) governing the issuance, denial, modification, or revocation of permits. The board may not require a  
11 permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not  
12 contain industrial waste, sewage, or other wastes. Discharge to surface water of ground water that is not altered  
13 from its ambient quality does not constitute a discharge requiring a permit under this part if:

14 (i) the discharge does not contain industrial waste, sewage, or other wastes;

15 (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any  
16 parameters; and

17 (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters,  
18 the discharge does not increase the concentration of the parameters.

19 (c) governing authorization to discharge under a general permit for storm water associated with  
20 construction activity. These rules must allow an owner or operator to notify the department of the intent to be  
21 covered under the general permit. This notice of intent must include a signed pollution prevention plan that  
22 requires the applicant to implement best management practices in accordance with the general permit. The rules  
23 must authorize the owner or operator to discharge under the general permit on receipt of the notice and plan by  
24 the department.

25 (2) The rules must allow the issuance or continuance of a permit only if the department finds that  
26 operation consistent with the limitations of the permit will not result in pollution of any state waters, except that  
27 the rules may allow the issuance of a temporary permit under which pollution may result if the department  
28 ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and  
29 water quality standards in the shortest reasonable period of time.

30 (3) The rules must provide that the department may revoke a permit if the department finds that the

1 holder of the permit has violated its terms, unless the department also finds that the violation was accidental and  
2 unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was  
3 reasonably possible.

4 (4) The board may adopt rules governing reclamation of sites disturbed by construction, modification,  
5 or operation of permitted activities for which a bond is voluntarily filed by a permittee pursuant to 75-5-405,  
6 including rules for the establishment of criteria and procedures governing release of the bond or other surety and  
7 release of portions of a bond or other surety.

8 (5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following  
9 activities or operations are not subject to the ground water permit requirements adopted under subsections (1)  
10 through (4):

11 (a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production  
12 regulated under the federal underground injection control program;

13 (b) disposal by solid waste management systems licensed pursuant to 75-10-221;

14 (c) individuals disposing of their own normal household wastes on their own property;

15 (d) hazardous waste management facilities permitted pursuant to 75-10-406;

16 (e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and  
17 approved pursuant to Title 82, chapter 11;

18 (f) agricultural irrigation facilities;

19 (g) storm water disposal or storm water detention facilities;

20 (h) subsurface disposal systems for sanitary wastes serving individual residences;

21 (i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

22 (j) mining operations subject to operating permits or exploration licenses in compliance with The Strip  
23 and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82,  
24 chapter 4, part 3; or

25 (k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

26 (6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit  
27 requirements under subsection (5) of this section must be established by the permitting agency for those activities  
28 in accordance with 75-5-301(4)(a) through (4)(c).

29 (7) Notwithstanding the exclusions set forth in subsection (5), any excluded source that the department  
30 determines may be causing or is likely to cause violations of ground water quality standards may be required to

1 submit monitoring information pursuant to 75-5-602.

2 (8) The board may adopt rules identifying other activities or operations from which a discharge of  
3 sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit  
4 requirements adopted under subsections (1) through (4).

5 (9) The board may adopt rules authorizing general permits for categories of point source discharges.  
6 The rules may authorize discharge upon issuance of an individual authorization by the department or upon receipt  
7 of a notice of intent to be covered under the general permit."  
8

9 **Section 10.** Section 75-5-803, MCA, is amended to read:

10 **"75-5-803. Fees for concentrated animal feeding operation permits --environmental review.** (1) (a)  
11 The fees for a general permit authorization or an individual permit are \$600 for the initial application and \$600  
12 for each renewal.

13 (b) In addition to the fees provided for in subsection (1)(a), there is an annual fee for a general permit  
14 authorization or an individual permit. The fee is \$600 and is subject to the annual fee reduction provisions in  
15 75-5-516(2)(b).

16 (2) ~~The department is required to conduct only the type of environmental assessment that would be~~  
17 ~~conducted for a routine action with limited environmental impact pursuant to Title 75, chapter 1, part 2, as the~~  
18 ~~necessary level of environmental review for concentrated animal feeding operations that qualify for a general~~  
19 ~~permit pursuant to 75-5-802. For concentrated animal feeding operations that require an individual permit, the~~  
20 ~~level of environmental review must be an environmental assessment unless the department determines that an~~  
21 ~~environmental impact statement is required pursuant to 75-1-204. A programmatic environmental impact~~  
22 ~~statement is not required for permitting conducted under 75-5-802."~~  
23

24 **Section 11.** Section 75-10-715, MCA, is amended to read:

25 **"75-10-715. Liability -- reimbursement and penalties -- proceedings -- defenses and exclusions.**

26 (1) Except as provided in 70-30-323 and 75-10-742 through 75-10-751, notwithstanding any other provision of  
27 law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7),  
28 the following persons are jointly and severally liable for a release or threatened release of a hazardous or  
29 deleterious substance from a facility:

30 (a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed

1 of;

2 (b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a  
3 facility where the hazardous or deleterious substance was disposed of;

4 (c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious  
5 substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance  
6 or arranged with a transporter for transport of the substance for disposal or treatment; and

7 (d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a  
8 disposal or treatment facility.

9 (2) A person identified in subsection (1) is liable for the following costs:

10 (a) all remedial action costs incurred by the state; and

11 (b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened  
12 release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury,  
13 destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified  
14 as an irreversible and irretrievable commitment of natural resources in an ~~approved final state or federal~~  
15 environmental impact statement or other comparable ~~approved final~~ environmental analysis for a project or facility  
16 that was the subject of a governmental permit or license and the project or facility was being operated within the  
17 terms of its permit or license.

18 (3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department  
19 order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department  
20 pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount  
21 of any costs incurred by the state pursuant to this section.

22 (4) The department may initiate civil proceedings in district court to recover remedial action costs, natural  
23 resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties  
24 must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties  
25 lies in the county where the release occurred or where the person liable under subsection (1) resides or has its  
26 principal place of business or in the district court of the first judicial district.

27 (5) A person has a defense and is not liable under subsections (1), (2), and (3) if the person can  
28 establish by a preponderance of the evidence that:

29 (a) the department failed to provide notice to the person claiming the defense when required by  
30 75-10-711. Establishment of this defense only prohibits the department from collecting those costs incurred or

1 encumbered by the department prior to providing notice to the person and does not provide the person a defense  
2 to any other liability.

3 (b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any  
4 hazardous or deleterious substance or over which the person had any ownership, authority, or control and was  
5 not caused by any action or omission of the person;

6 (c) the release or threatened release occurred solely as a result of:

7 (i) an act or omission of a third party other than either an employee or agent of the person; or

8 (ii) an act or omission of a third party other than one whose act or omission occurs in connection with a  
9 contractual relationship, existing directly or indirectly, with the person, if the person establishes by a  
10 preponderance of the evidence that the person:

11 (A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into  
12 consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and  
13 circumstances; and

14 (B) took precautions against foreseeable acts or omissions of a third party and the consequences that  
15 could foreseeably result from those acts or omissions;

16 (d) the release or threatened release occurred solely as the result of an act of God or an act of war;

17 (e) the release or threatened release was from a facility for which a permit had been issued by the  
18 department, the hazardous or deleterious substance was specifically identified in the permit, and the release was  
19 within the limits allowed in the permit;

20 (f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person  
21 prevented the person from taking timely remedial action; or

22 (g) the person transported only household refuse, unless that person knew or reasonably should have  
23 known that the hazardous or deleterious substance was present in the refuse.

24 (6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not  
25 limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on  
26 which the facility is located was acquired by the person after the disposal or placement of the hazardous or  
27 deleterious substance on, in, or at the facility and one or more of the following circumstances is also established  
28 by the person by a preponderance of the evidence:

29 (i) At the time the person acquired the facility, the person did not know and had no reason to know that  
30 a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of

1 on, in, or at the facility.

2 (ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through  
3 any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or  
4 condemnation pursuant to Title 70, chapter 30.

5 (iii) The person acquired the facility by inheritance or bequest.

6 (b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii),  
7 the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

8 (c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person  
9 must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of  
10 the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes  
11 of assessing this inquiry, the following must be taken into account:

12 (i) any specialized knowledge or experience on the part of the person;

13 (ii) the relationship of the purchase price to the value of the property if uncontaminated;

14 (iii) commonly known or reasonably ascertainable information about the property;

15 (iv) the obviousness of the presence or the likely presence of contamination on the property; and

16 (v) the ability to detect the contamination by appropriate inspection.

17 (d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous  
18 owner or operator of the facility who would otherwise be liable under this part.

19 (ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of  
20 the release or threatened release of a hazardous or deleterious substance at the facility when the person owned  
21 the real property and then subsequently transferred ownership of the property to another person without  
22 disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under  
23 subsection (5)(b) or (5)(c) is not available to that person.

24 (e) This subsection (6) does not affect the liability under this part of a person who, by any act or  
25 omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance  
26 that is the subject of the action relating to the facility.

27 (7) A person has an exclusion and is not liable under this section if:

28 (a) the person generated or disposed of only household refuse, unless the person knew or reasonably  
29 should have known that the hazardous or deleterious substance was present in the refuse;

30 (b) the person owns or operates real property where hazardous or deleterious substances have come

1 to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the  
2 person's property, provided that the following conditions are met:

3 (i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release  
4 of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to  
5 mitigate or address contamination that has migrated from a source outside the owner's or operator's property  
6 does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

7 (ii) the person who caused, contributed to, or exacerbated the release or threatened release of any  
8 hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not  
9 or was not in a direct or indirect contractual relationship with the owner or operator, unless the department  
10 provides a written determination that an existing or proposed contractual relationship is an insufficient basis to  
11 establish liability under this section;

12 (iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or  
13 threatened release of a hazardous or deleterious substance; and

14 (iv) the owner or operator cooperates with the department and all persons conducting  
15 department-approved remedial actions on the property, including granting access and complying with and  
16 implementing all required institutional controls;

17 (c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that  
18 the following conditions are met:

19 (i) the person did not cause, contribute to, or exacerbate the release or threatened release of any  
20 hazardous or deleterious substance through any act or omission;

21 (ii) the person uses or allows the use of the real property for residential purposes. This exclusion does  
22 not apply to any person who acquires or develops real property for commercial use or any use other than  
23 residential use.

24 (iii) at the time the person purchased or occupied the real property, there were no visible indications of  
25 contamination on the surface of the real property;

26 (iv) the person cooperates with the department and all persons conducting department-approved  
27 remedial actions on the property, including granting access and complying with and implementing all required  
28 institutional controls; and

29 (v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or  
30 threatened release of a hazardous or deleterious substance.

1 (8) A person is liable under this section if the department provides substantial credible evidence that the  
2 person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

3 (9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a  
4 hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held  
5 in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part  
6 independent of the person's ownership or actions taken in a fiduciary capacity.

7 (10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable  
8 under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of  
9 75-10-701(15)(b) because of any one or any combination of the following:

10 (a) holding an interest in real or personal property when the interest is being held as security for payment  
11 or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest,  
12 assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the  
13 owner to ensure repayment of a financial obligation;

14 (b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility,  
15 making financing conditional upon environmental compliance, or providing environmental information or reports;

16 (c) monitoring the operations conducted at a facility or providing access to a facility to the department  
17 or its agents or to remedial action contractors;

18 (d) having the mere capacity or unexercised right to influence a facility's management of hazardous or  
19 deleterious substances;

20 (e) giving advice, information, guidance, or direction concerning the administrative and financial aspects,  
21 as opposed to day-to-day operational aspects, of a borrower's operations;

22 (f) providing general information concerning federal, state, or local laws governing the transportation,  
23 storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial  
24 action contractors;

25 (g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

26 (h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking  
27 other activities to protect or preserve the value of the security interest in a facility;

28 (i) extending or denying credit to a person owning or in lawful possession of a facility;

29 (j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or  
30 deleterious substances or to contain a release;

1 (k) requiring or conducting remedial action in response to a release or threatened release if prior notice  
2 is given to the department and the department approves of the remedial action; or

3 (l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time  
4 the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction  
5 (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the  
6 property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or  
7 appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that  
8 the holder does not:

9 (i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would  
10 effectively compensate the holder for the amount secured by the facility;

11 (ii) worsen the contamination at the facility;

12 (iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous  
13 or deleterious substances; or

14 (iv) engage in conduct described in subsection (11).

15 (11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to  
16 a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through  
17 affirmative conduct:

18 (a) causes or contributes to a release of hazardous or deleterious substances from the facility;

19 (b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

20 (c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually  
21 participates in the management of a facility by:

22 (i) exercising decisionmaking control over environmental compliance; or

23 (ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for  
24 day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational,  
25 as opposed to financial or administrative, aspects of the facility."

26

27 **Section 12.** Section 75-10-735, MCA, is amended to read:

28 **"75-10-735. Public participation.** (1) Upon determination by the department that an application for a  
29 voluntary cleanup plan is complete pursuant to 75-10-736(1), the department shall publish a notice and brief  
30 analysis of the proposed plan in a daily newspaper of general circulation in the area affected and make the plan

1 available to the public.

2 (2) The notice must provide 30 days for submission of written comments to the department regarding  
3 the plan. Upon written request by 10 or more persons, by a group composed of 10 or more members, or by a  
4 local governing body of a city, town, or county within the comment period, the department shall conduct a public  
5 meeting at or near the facility regarding the proposed voluntary cleanup plan. The meeting must be held within  
6 45 days of the department's completeness determination under 75-10-736(1).

7 (3) The department shall consider and respond to relevant written or verbal comments submitted during  
8 the comment period or at the public meeting.

9 (4) The department's decision on the final plan and the reasons for any significant modification of the  
10 final plan must be published in accordance with subsection (1).

11 ~~(5) Compliance with this section is considered to satisfy the public participation requirements of Title 75,~~  
12 ~~chapter 1."~~

13

14 **Section 13.** Section 75-10-922, MCA, is amended to read:

15 **"75-10-922. Study, evaluation, and report on proposed facility.** (1) After receipt of an application,  
16 the department shall within 90 days notify the applicant in writing that:

17 (a) the application is accepted as complete; or

18 (b) the application is not complete and list the deficiencies. Upon correction of these deficiencies and  
19 resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the  
20 application is in compliance and is accepted as complete.

21 (2) Upon receipt of an application complying with 75-10-913, 75-10-914, and 75-10-916 through  
22 75-10-922, the department shall commence an intensive study and evaluation of the proposed facility and its  
23 effects, considering all applicable criteria listed in 75-10-929. The department shall use, to the extent it considers  
24 applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or  
25 federal agency.

26 (3) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), within~~ Within 1 year following acceptance of  
27 a complete application for a facility, the department shall make a report to the board that must contain the  
28 department's studies, evaluations, recommendations, other pertinent documents resulting from its study and  
29 evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental  
30 Policy Act, Title 75, chapter 1, if applicable."

1

2           **Section 14.** Section 75-20-215, MCA, is amended to read:

3           **"75-20-215. Filing fee -- accountability -- refund -- use.** (1) (a) A filing fee must be deposited in the  
4 state special revenue fund for the use of the department in administering ~~Title 75, chapter 1, and~~ this chapter.  
5 The applicant shall pay to the department a filing fee as provided in this section based upon the department's  
6 estimated costs of processing the application under this chapter. The fee may not exceed the following scale  
7 based upon the estimated cost of the facility:

8           (i) 6% of any estimated cost up to \$1 million; plus

9           (ii) 1% of any estimated cost over \$1 million and up to \$5 million; plus

10          (iii) 0.8% of any estimated cost over \$5 million and up to \$10 million; plus

11          (iv) 0.5% of any estimated cost over \$10 million and up to \$20 million; plus

12          (v) 0.25% of any estimated cost over \$20 million and up to \$100 million; plus

13          (vi) 0.125% of any estimated cost over \$100 million and up to \$500 million; plus

14          (vii) 0.05% of any estimated cost over \$500 million and up to \$1 billion; plus

15          (viii) 0.025% of any estimated cost over \$1 billion.

16          (b) The department may allow in its discretion a credit against the fee payable under this section for the  
17 development of information or providing of services required under this chapter or required for preparation of an  
18 environmental impact statement or assessment under the Montana or national environmental policy acts. The  
19 applicant may submit the information to the department, together with an accounting of the expenses incurred  
20 in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data  
21 and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days'  
22 notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary  
23 to carry out its responsibilities under this chapter.

24          (2) (a) The department may contract with an applicant for the development of information, provision of  
25 services, and payment of fees required under this chapter. The contract may continue an agreement entered into  
26 pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee  
27 payable pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing  
28 fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216(6) to carry out  
29 their responsibilities under this chapter. The department may amend a contract to require additional payments  
30 for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The

1 department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

2 (b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with  
3 a schedule of installments developed by the department, provided that an installment may not exceed 20% of the  
4 total filing fee provided for in subsection (1).

5 (3) The estimated cost of upgrading an existing transmission substation may not be included in the  
6 estimated cost of a proposed facility for the purpose of calculating a filing fee.

7 (4) If an application consists of a combination of two or more facilities, the filing fee must be based on  
8 the total estimated cost of the combined facilities.

9 (5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate  
10 of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities  
11 under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted  
12 by all parties to the certification proceedings.

13 (6) The revenue derived from filing fees must be used by the department in compiling the information  
14 required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities  
15 under this chapter."  
16

17 **Section 15.** Section 75-20-216, MCA, is amended to read:

18 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

19 (1) After receipt of an application, the department shall within 30 days notify the applicant in writing that:

20 (a) the application is in compliance and is accepted as complete; or

21 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these  
22 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant in writing  
23 that the application is in compliance and is accepted as complete.

24 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this  
25 section, the department shall commence an evaluation of the proposed facility and its effects, considering all  
26 applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as  
27 provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful  
28 existing studies and reports submitted by the applicant or compiled by a state or federal agency.

29 (3) Except as provided in ~~75-1-205(4), 75-1-208(4)(b), and~~ 75-20-231, the department shall issue, within  
30 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit

1 required under the laws, other than those contained in this chapter, administered by the department. A decision,  
 2 opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless,  
 3 the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision,  
 4 opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a  
 5 preliminary decision by the board and pursuant to rules adopted by the department, the department shall provide  
 6 an opportunity for public review and comment.

7 (4) Except as provided in ~~75-1-205(4), 75-1-208(4)(b), and 75-20-231~~, within 9 months following  
 8 acceptance of an application for a facility, the department shall issue a report that must contain the department's  
 9 studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation. An  
 10 environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act may be  
 11 included in the department findings if compelling evidence indicates that adverse environmental impacts are likely  
 12 to result due to the construction and operation of a proposed facility. If the application is for a combination of two  
 13 or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this  
 14 subsection for either of the facilities.

15 (5) For projects subject to joint review by the department and a federal land management agency, the  
 16 department's certification decision may be timed to correspond to the record of decision issued by the  
 17 participating federal agency.

18 (6) The departments of transportation, fish, wildlife, and parks, natural resources and conservation,  
 19 revenue, and public service regulation shall report to the department information relating to the impact of the  
 20 proposed site on each department's area of expertise. The report may include opinions as to the advisability of  
 21 granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to  
 22 the departments making reports to reimburse them for the costs of compiling information and issuing the required  
 23 report."  
 24

25 **Section 16.** Section 75-20-223, MCA, is amended to read:

26 **"75-20-223. Board review of department decisions.** (1) A person aggrieved by the final decision of  
 27 the department on an application for a certificate or the issuance of an air or water quality decision, opinion, order,  
 28 certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested  
 29 case procedures of Title 2, chapter 4, part 6.

30 (2) A person aggrieved by the final decision of the department on an application for amendment of a

1 certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2,  
2 chapter 4, part 6.

3 ~~(3) A person aggrieved by the department's decision not to include an environmental impact statement~~  
4 ~~or analysis in the department's findings pursuant to 75-20-216 may within 30 days appeal the decision to the~~  
5 ~~board under the contested case procedures of Title 2, chapter 4, part 6."~~

6

7 **Section 17.** Section 75-20-231, MCA, is amended to read:

8 **"75-20-231. Expedited review.** (1) ~~Except as provided in 75-1-208(4)(b), the~~ The department shall issue  
9 a certification decision within 90 days from the date on which an application is considered complete for a facility  
10 that:

11 (a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in  
12 75-20-232; or

13 (b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to  
14 result in significant impacts pursuant to 75-20-232.

15 (2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study,  
16 except as provided in 75-1-201."

17

18 **Section 18.** Section 76-4-125, MCA, is amended to read:

19 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
20 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
21 authority. The review by the reviewing authority must be as follows:

22 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
23 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
24 include preliminary plans and specifications for the proposed development, whatever information the developer  
25 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
26 provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the  
27 reviewing authority must accompany the application. If the proposed development includes onsite sewage  
28 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting  
29 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to  
30 determine whether the site meets applicable state and local requirements.

1 (b) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), the~~ The department shall make a final decision  
2 on the proposed subdivision within 60 days after the submission of a complete application and payment of fees  
3 to the reviewing authority ~~unless an environmental impact statement is required, at which time this deadline may~~  
4 ~~be increased to 120 days.~~ The reviewing authority may not request additional information for the purpose of  
5 extending the time allowed for a review and final decision on the proposed subdivision. If the department  
6 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has  
7 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

8 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to  
9 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
10 the provisions of this part, are not subject to review:

11 (a) the exclusions cited in 76-3-201 and 76-3-204;

12 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
13 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
14 that the division does not fall within a previously platted or approved subdivision;

15 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste  
16 disposal facilities as the department specifies by rule;

17 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1  
18 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,  
19 that adequate storm water drainage and adequate municipal facilities will be provided; and

20 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating  
21 a parcel from the tract for purposes of transfer if:

22 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,  
23 pursuant to local regulations or this chapter; or

24 (ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to  
25 April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

26 (3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that,  
27 prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated  
28 from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to  
29 accommodate a replacement drainfield."  
30

1           **Section 19.** Section 77-1-121, MCA, is amended to read:

2           "**77-1-121. Environmental review compliance -- exemptions.** (1) ~~Except as provided in subsection~~  
3 ~~(2), the~~ The department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and  
4 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale,  
5 exchange, right-of-way, easement, or placement of improvement, ~~lease, license, or permit, or is acting in~~  
6 ~~response to an application for an authorization for such a proposal.~~

7           ~~(2) The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when~~  
8 ~~issuing any lease or license that expressly states that the lease or license is subject to further permitting under~~  
9 ~~any of the provisions of Title 75 or 82.~~

10           ~~(3)(2)~~ Except for rulemaking and as provided in subsection (1), the department and board are otherwise  
11 exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77,  
12 including but not limited to the issuance of lease renewals. The department and board do not have an obligation  
13 to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77  
14 if the department or board chooses not to take any action, even though either may have the authority to take an  
15 action.

16           ~~(4)(3)~~ The department and board are exempt from the provisions of Title 75, chapter 1, parts 1 and 2,  
17 when taking actions, including preparing plans or proposals, in relation to and in compliance with the following  
18 local government actions:

- 19           (a) development or adoption of a growth policy or a neighborhood plan pursuant to Title 76, chapter 1;  
20           (b) development or adoption of zoning regulations;  
21           (c) review of a proposed subdivision pursuant to Title 76, chapter 3;  
22           (d) actions related to annexation;  
23           (e) development or adoption of plans or reports on extension of services; and  
24           (f) other actions that are related to local planning."  
25

26           **Section 20.** Section 77-2-363, MCA, is amended to read:

27           "**77-2-363. Land banking land sales and limitations.** (1) The board may not cumulatively sell or  
28 dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must  
29 be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land  
30 banking process, the board may not sell more than 20,000 acres of state land unless the board has acted to use

1 the revenue from that land to make purchases pursuant to 77-2-364.

2 (2) (a) A person bidding to purchase state land offered for sale shall 45 days prior to the day of auction  
3 deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana  
4 bank equal to at least 50% of the minimum sale price specified by the department pursuant to 77-2-323(1) to  
5 guarantee the bidder's payment of the purchase price.

6 (b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee  
7 may cancel the sale by giving notice to the department at least 30 days prior to the day of the auction. When the  
8 sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of  
9 the sale ~~including any costs incurred for preparation of documents required by 75-1-201.~~

10 (c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of  
11 the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the  
12 successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

13 (3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the  
14 proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice  
15 of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee  
16 wishes to propose an exchange of the land to the board.

17 (4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the  
18 rights and privileges to match the high bid, as provided in 77-2-324."

19

20 **Section 21.** Section 77-5-201, MCA, is amended to read:

21 **"77-5-201. Sale of timber.** (1) Under the direction of the board, the department may sell the timber crop  
22 and other crops of the forests after examination, estimate, appraisal, and report and under any rules established  
23 by the board.

24 (2) Timber proposed for sale in excess of 100,000 board feet must be advertised in a paper of the county  
25 in which the timber is situated for a period of at least 30 days, during which time the department must receive  
26 sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

27 (3) (a) In cases of emergency ~~due to~~ because of fire, insect, fungus, parasite, or blowdown or in cases  
28 when the department is required to act immediately to take advantage of access granted by permission of an  
29 adjoining landowner, timber proposed for sale not in excess of 1 million board feet may be advertised by invitation  
30 to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board,

1 or it shall award the sale to the highest responsible bidder.

2 (b) (i) In cases when the department is required to act immediately to take advantage of access granted  
3 by permission of an adjoining landowner and there is only one potential buyer with legal access, the department  
4 may negotiate a sale of timber not in excess of 1 million board feet without offering the timber for bid if the sale  
5 is for fair market value.

6 (ii) The provisions of subsection (3)(b)(i) do not apply to situations when the only access is totally  
7 controlled by a potential purchaser of the timber, in which case the department shall seek to negotiate permanent,  
8 reciprocal access.

9 ~~(c) In the situations described in subsections (3)(a) and (3)(b)(i), the department is not required to comply  
10 with the provisions of 75-1-201(1) to the extent that compliance is precluded by limited time available to take  
11 advantage of the sales opportunities described by this subsection (3)."~~

12

13 **Section 22.** Section 77-5-208, MCA, is amended to read:

14 **"77-5-208. Timber conservation license in lieu of sale.** ~~(1)~~ Under the direction of the board, the  
15 department may offer and provide a timber conservation license in lieu of the sale and harvesting of the timber  
16 to any person under all of the following conditions:

17 ~~(a) During the environmental review process required by Title 75, chapter 1, for a proposed timber sale,  
18 an interested person shall provide to the department a written request that the department defer the sale or a  
19 specific portion of the sale and that a timber conservation license for the sale or portion of the sale be authorized.~~

20 ~~(b)(1)~~ Upon receipt of a written request, the department shall prepare and recommend the timber sale  
21 for consideration by the board, using the alternatives of the sale with and the sale without a timber conservation  
22 license provision.

23 ~~(c)(2)~~ The department shall solicit bids simultaneously for each alternative authorized by this section to  
24 ensure that the full, fair market value is secured for the beneficiaries.

25 ~~(d)(3)~~ The successful purchaser of a timber conservation license is required to furnish a bond, as  
26 required by 77-5-202, to ensure the terms of the contract for a timber conservation license.

27 ~~(e)(4)~~ The successful purchaser of a timber conservation license is required to pay the fees for forest  
28 improvement, as required by 77-5-204, that are included in the terms of the sale bid and applicable to the  
29 issuance of a timber conservation license.

30 ~~(2) If a request for the timber sale analysis and authorization of a timber conservation license is not~~

1 ~~submitted to the department prior to the completion of the environmental review process for the sale, as required~~  
2 ~~by Title 75, chapter 1, a timber conservation license may not be authorized."~~

3

4 **Section 23.** Section 77-5-212, MCA, is amended to read:

5 **"77-5-212. Commercial permits for timber sale.** (1) Permits may be issued to citizens of the state for  
6 commercial purposes, at commercial rates, without advertising, and under restrictions and rules that the board  
7 may approve for the sale of timber:

8 (a) in quantities of less than 100,000 board feet; and

9 (b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities  
10 of less than 200,000 board feet.

11 (2) To apply for a permit under this section, an individual shall:

12 (a) complete a permit application on a form provided by the department and submit the completed  
13 application to the department office that is responsible for management of the state land where the proposed sale  
14 is located;

15 (b) using ribbon, mark the area of the proposed sale; and

16 (c) designate on a U.S. geological survey map or other approved map the area proposed for sale and  
17 existing roads that would be used to remove timber from the site.

18 (3) For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance  
19 and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and  
20 shall provide a performance bond in an amount not to exceed \$1,000.

21 (4) For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance  
22 and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and  
23 shall provide a performance bond in accordance with 77-5-202.

24 (5) Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed  
25 by the department, the department shall review completed permit applications within 30 days of the application's  
26 submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall  
27 perform an appraisal within 60 days of the application's submittal.

28 (6) The department shall issue a permit within 5 working days of the date that the applicant agrees to  
29 the terms of the proposed sale, unless the parties mutually agree upon a time extension.

30 (7) Repeated permits of this kind may not be issued to avoid advertising and the consequent competition

1 secured by advertising.

2 (8) Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and  
 3 the ~~department~~ project sponsor is not required to comply with the provisions of 75-1-201(1) ~~in reviewing those~~  
 4 ~~applications.~~

5 (9) Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and  
 6 harvest of green timber pursuant to 77-5-207.

7 (10) Permit applications made pursuant to this section may be subject to further environmental review,  
 8 and the number of permits may be limited if the department determines that sales may have a cumulative effect  
 9 on geographic area."  
 10

11 **Section 24.** Section 82-4-122, MCA, is amended to read:

12 **"82-4-122. Application and approval of permit.** (1) A person desiring a mine-site location permit shall  
 13 file with the department an application that must contain a reclamation plan for any preparatory work and any  
 14 other information the department considers necessary to determine if the proposed area to be affected by the  
 15 operation is appropriate for the location of a new strip mine or a new underground mine. The department may  
 16 require any information included in but not limited to an application for a strip-mining permit or  
 17 underground-mining permit as required by part 2 of this chapter.

18 (2) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), the~~ The department shall notify the applicant  
 19 within 365 days of receipt of a complete application if the proposed site is an acceptable location for development  
 20 of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant  
 21 a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing,  
 22 setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365  
 23 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan  
 24 is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose  
 25 modifications, delete areas, or reject the entire plan."  
 26

27 **Section 25.** Section 82-4-231, MCA, is amended to read:

28 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively  
 29 as the most modern technology and the most advanced state of the art will allow, each operator granted a permit  
 30 under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels,

1 shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules  
2 adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading,  
3 backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for  
4 the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling,  
5 highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be  
6 taken to eliminate damages to landowners and members of the public, their real and personal property, public  
7 roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and  
8 hazards dangerous to life and property.

9 (2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with  
10 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water  
11 quality laws and rules and any applicable health and safety standards.

12 (3) The application for a permit or major revision of a permit, which must contain the reclamation plan,  
13 must be submitted to the department.

14 (4) The department shall determine whether the application is administratively complete. An application  
15 is administratively complete if it contains information addressing each application requirement in 82-4-222 and  
16 the rules implementing that section and all information necessary to initiate processing and public review. The  
17 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the  
18 application. If the department determines that the application is not administratively complete, it shall specify in  
19 the notice those items that the application must address. The application is presumed administratively complete  
20 as to those requirements not specified in the notice.

21 ~~(5) If the department determines that an environmental impact statement on the application is required,~~  
22 ~~it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).~~

23 ~~(6)~~(5) After the applicant receives notice that the application is administratively complete, the applicant  
24 shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general  
25 circulation in the locality of the proposed operation. The department shall notify various local governmental  
26 bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which  
27 the proposed mining will take place of the application and provide a reasonable time for them to submit written  
28 comments. Any person having an interest that is or may be adversely affected or the officer or head of any  
29 federal, state, or local governmental agency or authority may file written objections to the proposed initial or  
30 revised application for permit or major revision within 30 days of the applicant's published notice. If written

1 objections are filed and an objector requests an informal conference, the department shall hold an informal  
2 conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall  
3 notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within  
4 60 days of the informal conference. The department may arrange with the applicant upon request by any party  
5 to the administrative proceeding for access to the proposed mining area for the purpose of gathering information  
6 relevant to the proceeding.

7 ~~(7)(6)~~ The filing of written objections or a request for an informal conference may not preclude the  
8 department from proceeding with its review of the application as specified in subsection ~~(8)~~ (7).

9 ~~(8)(7)~~ (a) The department shall review each administratively complete application and determine the  
10 acceptability of the application. During the review, the department may propose modifications to the application  
11 or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is  
12 considered acceptable when the application is in compliance with all of the applicable requirements of this part  
13 and the regulatory program pursuant to this part.

14 (b) If the applicant significantly modifies the application after the application has been determined  
15 administratively complete in accordance with subsection (4), the department shall under this section either deny  
16 the application or conduct a new review, including an administrative completeness determination, public notice,  
17 and objection period.

18 (c) If an environmental impact statement is determined to be necessary prior to making a permit decision,  
19 the department shall complete and publish the final environmental impact statement at least 15 days prior to the  
20 date of issuance of the written findings pursuant to subsection ~~(8)(f)~~ (7)(f).

21 ~~(d) Except as provided in 75-1-205(4) and 75-1-208(4)(b), within~~ Within 120 days after it determines that  
22 an application is administratively complete, the department shall notify the applicant in writing whether the  
23 application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons  
24 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items  
25 not specified as unacceptable in the department's notification are presumed to be acceptable. ~~Except as provided~~  
26 ~~in 75-1-208(4)(b), if~~ If the applicant revises the application in response to a notice of unacceptability, the  
27 department shall review the revised application and notify the applicant in writing within 120 days of the date of  
28 receipt whether the revised application is acceptable. If the revision constitutes a significant modification under  
29 subsection ~~(8)(b)~~ (7)(b), the department shall conduct a new review, beginning with an administrative  
30 completeness determination.

1 (e) When the application is determined to be acceptable, the department shall publish notice of its  
 2 determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the  
 3 proposed operation. Any person having an interest that is or may be adversely affected may file a written  
 4 objection to the determination within 10 days of the department's last published notice. If a written objection is  
 5 filed and an objector requests an informal conference, the department shall hold an informal conference in the  
 6 locality of the proposed operation within 20 days of receipt of the request. The department shall notify the  
 7 applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days  
 8 of the informal conference.

9 (f) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), the~~ The department shall prepare written  
 10 findings granting or denying the permit or major revision application in whole or in part not later than 45 days from  
 11 the date the application is determined acceptable. However, if lands subject to the federal lands program are  
 12 included in the application for permit or major revision, the department shall prepare and submit written findings  
 13 to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue  
 14 the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the  
 15 concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written  
 16 notification to the applicant.

17 (g) If the department fails to act within the times specified in this subsection ~~(8)~~ (7), it shall immediately  
 18 notify the board in writing of its failure to comply and the reasons for the failure to comply.

19 ~~(9)~~(8) The applicant, a landowner, or any person with an interest that is or may be adversely affected  
 20 by the department's permit decision may within 30 days of that decision submit a written notice requesting a  
 21 hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The  
 22 hearing must be started within 30 days of the request. For purposes of a hearing, the board or its hearings officer  
 23 may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing  
 24 notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the  
 25 findings and decisions. A person who presided at the informal conference may not preside at the hearing or  
 26 participate in the decision.

27 ~~(10)~~(9) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence  
 28 stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part,  
 29 the operator, consistent with the directives of subsection (1), shall:

30 (a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the

1 department to be acid-producing, toxic, undesirable, or creating a hazard;

2 (b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating  
3 a hazard;

4 (c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage  
5 to grazing and agricultural lands, and pollution of surface and subsurface waters;

6 (d) remove or bury all metal, lumber, and other refuse resulting from the operation;

7 (e) use explosives in connection with the operation only in accordance with department regulations  
8 designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other  
9 purposes;

10 (f) adopt measures to prevent land subsidence unless the department approves a plan for inducing  
11 subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading,  
12 topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved,  
13 the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private  
14 buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or  
15 a viable agricultural operation, or violate any other restrictions the department may consider necessary.

16 (g) stockpile and protect from erosion all mining and processing wastes until these wastes can be  
17 disposed of according to the provisions of this part;

18 (h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment  
19 in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of  
20 as provided by this part and the rules of the board.

21 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground  
22 mine workings when no longer needed;

23 (j) to the extent possible using the best technology currently available, minimize disturbances and  
24 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement  
25 of those resources when practicable;

26 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas  
27 and to the quality and quantity of water in surface water and ground water systems both during and after strip-  
28 or underground-coal-mining operations and during reclamation by:

29 (i) avoiding acid or other toxic mine drainage by measures including but not limited to:

30 (A) preventing or removing water from contact with toxic-producing deposits;

- 1 (B) treating drainage to reduce toxic content that adversely affects downstream water upon being  
2 released to watercourses;
- 3 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic  
4 drainage from entering ground and surface waters;
- 5 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using  
6 the best technology currently available, additional contributions of suspended solids to streamflow or runoff  
7 outside the permit area, but the contributions may not be in excess of requirements set by applicable state or  
8 federal law;
- 9 (B) constructing any siltation structures pursuant to subsection ~~(10)(k)(ii)(A)~~ (9)(k)(ii)(A) prior to  
10 commencement of strip- or underground-mining operations, with the structures to be certified by a qualified  
11 registered engineer and to be constructed as designed and as approved in the reclamation plan;
- 12 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from  
13 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and  
14 in a manner approved by the department;
- 15 (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- 16 (v) avoiding channel deepening or enlargement in operations that requires the discharge of water from  
17 mines;
- 18 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of  
19 alluvial valley floors in the arid and semiarid areas of the country;
- 20 (vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to  
21 ensure long-term stability; and
- 22 (viii) any other actions that the department may prescribe;
- 23 (l) conduct strip- or underground-mine operations in accordance with the approved coal conservation  
24 plan;
- 25 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;
- 26 (n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage  
27 except when the department determines that the resulting impoundment of water in the auger holes may create  
28 a hazard to the environment or the public health and safety;
- 29 (o) develop contingency plans to prevent sustained combustion;
- 30 (p) refrain from construction of roads or other access ways up a streambed or drainage channel or in

1 proximity to the channel so as to seriously alter the normal flow of water;

2 (q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this  
3 part, taking into consideration the physical, climatological, and other characteristics of the site;

4 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that  
5 constitute a hazard to health and safety of the public;

6 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a  
7 manner that prevents a gravity discharge of water from the mine.

8 ~~(11)~~(10) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise  
9 placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials  
10 or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a  
11 bond has been posted under 82-4-223 or place the materials described in this section in a way that normal  
12 erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of  
13 that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects  
14 areas outside the permit area."  
15

16 **Section 26.** Section 82-4-232, MCA, is amended to read:

17 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of  
18 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land  
19 affected must be backfilled and graded to the approximate original contour of the land. However:

20 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the  
21 department may approve regraded topography gentler than premining topography in order to enhance the  
22 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater  
23 stability, and reduced soil losses from runoff and erosion;

24 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a  
25 long-term static safety factor of 1.3 or greater and to prevent slides;

26 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and  
27 otherwise meet the requirements of this part, as provided by board rules; and

28 (iv) reclaimed topography must be suitable for the approved postmining land use.

29 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box  
30 cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land

1 is achieved.

2 (c) When directed by the department, the operator shall construct in the final grading diversion ditches,  
3 depressions, or terraces that will accumulate or control the water runoff.

4 (2) In addition to the backfilling and grading requirements, the operator's method of operation on steep  
5 slopes may be regulated and controlled according to rules adopted by the board. These rules may require any  
6 measure to accomplish the purpose of this part.

7 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal,  
8 storage, replacement, and reconstruction, and the operator must as a minimum be required to:

9 (a) segregate the A horizon of the natural soil, except where it can be shown that other available soil  
10 materials will create a final soil having a greater productive capacity; and if not used immediately, stockpile this  
11 material separately from other spoil and provide needed protection from wind and water erosion or contamination  
12 by other acid or toxic material;

13 (b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination  
14 of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and  
15 that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to  
16 create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural  
17 soil; and if not used immediately, stockpile this material separately from other spoil and provide needed protection  
18 from wind and water erosion or contamination by acid or toxic material;

19 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction  
20 and uniform depth over the regraded spoil material; and

21 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

22 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and  
23 kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to  
24 removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of  
25 material that is capable, as determined by the department, of supporting surface vegetation virtually as well as  
26 the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available  
27 subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

28 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,  
29 subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept  
30 current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before

1 necessary equipment is moved from the operation.

2 (6) (a) The permittee may file an application with the department for the release of all or part of a  
3 performance bond. The application must contain a proposed public notice of the precise location of the land  
4 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount  
5 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work  
6 performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan.  
7 In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee  
8 has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water  
9 treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention  
10 to seek release from the bond.

11 (b) The department shall determine whether the application is administratively complete. An application  
12 is administratively complete if it includes:

13 (i) the location and acreage of the land for which bond release is sought;

14 (ii) the amount of bond release sought;

15 (iii) a description of the completed reclamation, including the date of performance;

16 (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved  
17 reclamation plan; and

18 (v) information required by rules implementing this part.

19 (c) The department shall notify the applicant in writing of its determination no later than 60 days after  
20 submittal of the application. If the department determines that the application is not administratively complete,  
21 it shall specify in the notice those items that the application must address. After an application for bond release  
22 has been determined to be administratively complete by the department, the permittee shall publish a public  
23 notice that has been approved as to form and content by the department at least once a week for 4 successive  
24 weeks in a newspaper of general circulation in the locality of the mining operation.

25 (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the  
26 responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or  
27 special expertise with respect to any environmental, social, or economic impact involved in the operation or is  
28 authorized to develop and enforce environmental standards with respect to the operation may file written  
29 objections to the proposed release of bond to the department within 30 days after the last publication of the  
30 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the

1 locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of  
2 the request for hearing. The department shall inform the interested parties of the time and place of the hearing.  
3 The date, time, and location of the public hearing must be advertised by the department in a newspaper of  
4 general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall  
5 notify the permittee and the objector of its final decision.

6 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department  
7 pursuant to this section, the department may establish an informal conference to resolve written objections.

8 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,  
9 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of  
10 materials, and take evidence, including but not limited to conducting inspections of the land affected and other  
11 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required  
12 by this section must be made, and a transcript must be made available on the motion of any party or by order of  
13 the department.

14 (g) If the applicant significantly modifies the application after the application has been determined to be  
15 administratively complete, the department shall conduct a new review, including an administrative completeness  
16 determination. A significant modification includes but is not limited to:

17 (i) the notification of an additional property owner, local governmental body, planning agency, or sewage  
18 and water treatment authority of the permittee's intention to seek a bond release;

19 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release  
20 sought; or

21 (iii) a material change in the reclamation for which a bond release is sought or the information used to  
22 evaluate the results of that reclamation.

23 (h) The department shall, within 30 days of determining that the application is administratively complete  
24 or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the  
25 evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining  
26 reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or  
27 future occurrence of the pollution, and the estimated cost of abating the pollution.

28 (i) The department shall review each administratively complete application to determine the acceptability  
29 of the application. A complete application is acceptable if the application is in compliance with all of the applicable  
30 requirements of this part, the rules adopted under this part, and the permit.

1 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no  
2 later than 60 days from the date of the inspection.

3 (ii) If the department determines that the application is not acceptable, it shall specify in the notice those  
4 items that the application must address.

5 (iii) If the applicant revises the application in response to a notice of unacceptability, the department shall  
6 review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether  
7 the revised application is acceptable.

8 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,  
9 beginning with an administrative completeness determination.

10 (v) A significant modification includes but is not limited to:

11 (A) the notification of an additional property owner, local governmental body, planning agency, or sewage  
12 and water treatment authority of the permittee's intention to seek a bond release;

13 (B) a material increase in the acreage for which a bond release is sought or the amount of bond release  
14 sought; or

15 (C) a material change in the reclamation for which a bond release is sought or the information used to  
16 evaluate the results of that reclamation.

17 (k) The department may release the bond in whole or in part if it is satisfied the reclamation covered by  
18 the bond or portion of the bond has been accomplished as required by this part according to the following  
19 schedule:

20 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded  
21 area in accordance with the approved reclamation plan, the department shall release 60% of the bond or  
22 collateral for the applicable permit area.

23 (ii) After revegetation has been established on the regraded lands in accordance with the approved  
24 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing  
25 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover  
26 the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the  
27 portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the  
28 operator or the landowner have been made with the department. Any part of the bond may not be released under  
29 this subsection (6)(k)(ii):

30 (A) as long as the lands to which the release would be applicable are contributing suspended solids to

1 streamflow or runoff outside the permit area in excess of the requirements of ~~82-4-231(10)(k)~~ 82-4-231(9)(k); or

2 (B) before soil productivity for prime farm lands to which the release would be applicable has returned  
3 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent  
4 management practices, as determined from the soil survey.

5 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,  
6 the department shall release the remaining portion of the bond, but not before the expiration of the period  
7 specified for responsibility and not until all reclamation requirements of this part are fully met.

8 (l) If the department disapproves the application for release of the bond or a portion of the bond, it shall  
9 notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions  
10 necessary to secure the release and allowing opportunity for a public hearing.

11 (m) When an application for total or partial bond release is filed with the department, it shall notify the  
12 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior  
13 to the release of all or a portion of the bond.

14 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting  
15 the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved  
16 pursuant to subsection (8).

17 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the  
18 landowner is not the operator, the operator shall submit written documentation of the concurrence of the  
19 landowner or the land management agency with jurisdiction over the land. The department may approve the  
20 proposed alternative postmining land use only if it meets all of the following criteria:

21 (i) There is a reasonable likelihood for achievement of the alternative land use.

22 (ii) The alternative land use does not present any actual or probable hazard to the public health or safety  
23 or any threat of water diminution or pollution.

24 (iii) The alternative land use will not:

25 (A) be impractical or unreasonable;

26 (B) be inconsistent with applicable land use policies or plans;

27 (C) involve unreasonable delay in implementation; or

28 (D) cause or contribute to violation of federal, state, or local law.

29 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to  
30 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

1 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are  
2 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to  
3 enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered  
4 species that have been documented to live in the area of land affected, and to enhance wetlands and riparian  
5 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement  
6 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the  
7 designated land use.

8 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or  
9 pipelines, may be replaced as part of the reclamation plan."

10

11 **Section 27.** Section 82-4-250, MCA, is amended to read:

12 **"82-4-250. Operating permit revocation -- permit transfer.** (1) An operating permit that is revoked in  
13 accordance with this part does not terminate until 5 years after revocation or until substantial completion of  
14 seeding and planting on disturbed areas, whichever occurs earlier.

15 (2) A person may apply for the transfer of a revoked permit that has not terminated by submitting an  
16 application to the department that contains the information required for a permit applicant in 82-4-222(1)(b)  
17 through (1)(i). Upon receipt of an application from a person who is not precluded from holding a permit pursuant  
18 to this part, the department shall cease reclamation activities on the permit area.

19 (3) The department may not require the applicant to submit any additional information unless the  
20 department can show that significant changes in the environmental baseline data have occurred during the period  
21 of operation or since the revocation of the initial operating permit.

22 (4) ~~The department may not~~ project sponsor is not required to prepare a review under 75-1-201 for a  
23 transfer unless ~~the department can show that the~~ operation has caused or may cause significant impacts that  
24 have not been analyzed previously in an environmental review document prepared pursuant to 75-1-201.

25 (5) The department shall process an application for transfer under the same timeframes as are provided  
26 in 82-4-231 for processing of permit applications.

27 (6) Except as provided in subsection (7), the department shall, after receipt of an application pursuant  
28 to subsections (2) through (5) and after public notice and opportunity for comment:

29 (a) transfer the operating permit to a new operator if the new operator provides proof of site ownership  
30 or control and adequate bonding as required by this part; and

1 (b) require as a condition of permit transfer that, prior to creating additional disturbance at the site, all  
2 preexisting permit deficiencies, including modifications necessary because of reclamation that has been  
3 conducted at the site, be corrected to the satisfaction of the department and that any preestablished  
4 environmental monitoring requirements continue.

5 (7) The department may not transfer any permit for which it can show that:

6 (a) the requirements of this part and the rules adopted under this part for operation, backfilling, grading,  
7 subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, and reclamation of the  
8 affected area cannot be met;

9 (b) significant changes in the operating plan or reclamation plan are necessary; or

10 (c) the department would be precluded from issuing a permit to the applicant by 82-4-227(11) or (12).

11 (8) The department is not required to reimburse the former permittee or surety for funds expended for  
12 reclamation, monitoring, or site maintenance prior to permit transfer.

13 (9) This section does not apply to the revocation or transfer of an operating permit that authorizes mine  
14 operations on federal lands."

15

16 **Section 28.** Section 82-4-335, MCA, is amended to read:

17 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore  
18 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide  
19 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those  
20 activities in the state without first obtaining an operating permit from the department. Except as provided in  
21 subsection (2), a separate operating permit is required for each complex.

22 (2) (a) A person who engages in the mining of rock products or a landowner who allows another person  
23 to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple  
24 sites if each of the multiple sites does not:

25 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or  
26 ground water;

27 (ii) have any water impounding structures other than for storm water control;

28 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

29 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as  
30 threatened or endangered under the Endangered Species Act of 1973; or

1 (v) impact significant historic or archaeological features.

2 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land  
3 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all  
4 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.  
5 The performance bond required under this part is and must be conditioned upon compliance with this part, the  
6 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the  
7 landowner's consent.

8 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents  
9 or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide  
10 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

11 (4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee  
12 of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an  
13 additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal  
14 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely  
15 and adequate review of the application, ~~including any environmental review conducted under Title 75, chapter~~  
16 ~~1, parts 1 and 2.~~ The board may further define these expenses by rule. Whenever the department determines  
17 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the  
18 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The  
19 department shall provide the applicant an opportunity to review the department's estimated expenses. The  
20 applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

21 (5) The person shall submit an application on a form provided by the department, which must contain  
22 the following information and any other pertinent data required by rule:

23 (a) the name and address of the operator and, if a corporation or other business entity, the name and  
24 address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and  
25 its resident agent for service of process, if required by law;

26 (b) the minerals expected to be mined;

27 (c) a proposed reclamation plan;

28 (d) the expected starting date of operations;

29 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,  
30 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately

1 adjacent to the area, and the location of proposed access roads to be built;

2 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of  
3 the surface of the land within the permit area and the owners of record and any purchasers under contracts for  
4 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not  
5 required to verify this information;

6 (g) the names and addresses of the present owners of record and any purchasers under contracts for  
7 deed of all minerals in the land within the permit area, provided that the department is not required to verify this  
8 information;

9 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,  
10 provided that the department is not required to verify this information;

11 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

12 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of  
13 the operation;

14 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and  
15 length of time to characterize the hydrologic regime;

16 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not  
17 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

18 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable  
19 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

20 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for  
21 expansion of the tailings impoundment or waste site; and

22 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial  
23 purposes, including evidence of consultation with the county commission of the county or counties where the  
24 mine or mine-related facilities will be located.

25 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale  
26 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may  
27 not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written  
28 guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule  
29 with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply  
30 with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock

1 mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact  
2 board that the permittee is in compliance.

3 (7) When the department determines that a permittee has become or will become a large-scale mineral  
4 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months  
5 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a  
6 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an  
7 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does  
8 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee  
9 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter  
10 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the  
11 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review  
12 and implementation requirements.

13 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing  
14 when the aggregate samples are less than 10,000 tons.

15 (9) A person may not be issued an operating permit if:

16 (a) that person's failure, or the failure of any firm or business association of which that person was a  
17 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or  
18 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department  
19 or the completion of reclamation by the person's surety or by the department, unless that person meets the  
20 conditions described in 82-4-360;

21 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to  
22 82-4-361;

23 (c) that person has failed to post a reclamation bond required by 82-4-305; or

24 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the  
25 department has completed the abatement and the person has reimbursed the department for the cost of  
26 abatement.

27 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the  
28 person provides the current information required in subsection (5)(a) and:

29 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of  
30 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

1 (ii) presents a certification by the administering agency that the violation is in the process of being  
 2 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and  
 3 (b) if the person is a partnership, corporation, or other business association, provides the certification  
 4 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%  
 5 or more of any class of voting stock, and business association members."

6

7 **Section 29.** Section 82-4-337, MCA, is amended to read:

8 **"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.**

9 (1) (a) The department shall review all applications for operating permits for completeness within 60 days of  
 10 receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial  
 11 completeness notice must note all deficiency issues, and the department may not in a later completeness notice  
 12 raise an issue pertaining to the initial application that was not raised in the initial notice. The department may,  
 13 however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall  
 14 notify the applicant concerning completeness as soon as possible. An application is considered complete unless  
 15 the applicant is notified of any deficiencies within the appropriate review period.

16 (b) ~~Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless~~ Unless the review period is extended  
 17 as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan  
 18 of operation within 30 days of the determination that the application is complete or within 60 days of receipt of  
 19 the application if the department does not notify the applicant of any deficiencies in the application. If the applicant  
 20 is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the  
 21 time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant  
 22 to the requirements of subsection (1)(c) of this section. The department shall promptly notify the applicant of the  
 23 form and amount of bond that will be required.

24 (c) A permit may not be issued until:

25 (i) sufficient bond has been submitted pursuant to 82-4-338;

26 (ii) the information and certification have been submitted pursuant to 82-4-335(10); and

27 (iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7).

28 (d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has  
 29 failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because  
 30 of extended adverse weather conditions, the department may extend the time period prescribed in subsection

1 (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall  
2 serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject  
3 to appeal to the board in accordance with the Montana Administrative Procedure Act.

4 ~~(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for~~  
5 ~~analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the~~  
6 ~~department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section~~  
7 ~~by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.~~

8 ~~(iii)(ii) Except as provided in 75-1-208(4)(b), if if the department determines that additional time is needed~~  
9 ~~to review the application and reclamation plan for a major operation, the department and the applicant shall~~  
10 ~~negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order~~  
11 ~~to permit reasonable review. The applicant may by written waiver extend this time period.~~

12 ~~(iv) If the department decides to hire a third-party contractor to prepare an environmental impact~~  
13 ~~statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to~~  
14 ~~the department and shall provide the applicant with a copy of the list. The applicant shall provide the department~~  
15 ~~with a list of at least 50% of the contractors from the department's list. The department shall select its contractor~~  
16 ~~from the list provided by the applicant.~~

17 ~~(v)(iii)~~ Failure of the department to act upon a complete application within the extension period  
18 constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as  
19 required in 82-4-338.

20 (2) The operating permit must be granted for the period required to complete the operation and is valid  
21 until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or  
22 revoked by the department as provided in this part.

23 (3) The operating permit must provide that the reclamation plan may be modified by the department,  
24 upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the  
25 term of the permit and for any of the following reasons:

26 (a) to modify the requirements so that they will not conflict with existing laws;

27 (b) when the previously adopted reclamation plan is impossible or impracticable to implement and  
28 maintain;

29 (c) when significant environmental problem situations are revealed by field inspection.

30 (4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit

1 revision. A modification of the operating permit, including a modification necessary to conform to the requirements  
2 of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the  
3 procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and  
4 this section, including any environmental analysis required by Title 75, chapter 1, part 2.

5 (b) The modification of an operating permit may not be finalized and an existing bond amount may not  
6 be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

7 (5) During the term of an operating permit, an operator may apply for an amendment or revision to the  
8 permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

9 (6) Applications for major amendments must be processed in the same manner as applications for new  
10 permits.

11 (7) Major amendments are those that may significantly affect the environment. Minor amendments are  
12 those that will not significantly affect the environment. The board may by rule establish criteria for classification  
13 of amendments as major or minor. The rules must establish requirements for the content of applications for  
14 amendments and revisions and procedures for processing of minor amendments.

15 ~~(8) If the department demonstrates that a revision may result in a significant environmental impact that~~  
16 ~~was not previously and substantially evaluated in an environmental impact statement, the application must be~~  
17 ~~processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications~~  
18 ~~for minor amendments and other revisions must be processed within 30 days of receipt of an application."~~

19

20 **Section 30.** Section 82-4-342, MCA, is amended to read:

21 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under  
22 this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment  
23 to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the  
24 disturbance, as required under 82-4-338.

25 (2) (a) The board may by rule establish criteria for the classification of amendments as major or minor.  
26 The board shall adopt rules establishing requirements for the content of applications for major and minor  
27 amendments and the procedures for processing minor amendments.

28 (b) An amendment must be considered minor if:

29 (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

30 (ii) evidence is submitted showing that a local government has requested retention of the mine-related

1 facilities for a postmining use; and

2 (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

3 (3) Applications for major amendments must be processed pursuant to 82-4-337.

4 (4) The department shall review an application for a minor amendment and provide a notice of decision  
5 on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the  
6 permit is revised in accordance with the application.

7 (5) The ~~department~~ project sponsor is not required to prepare an environmental assessment or an  
8 environmental impact statement for the following categories of action:

9 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review  
10 pursuant to Title 75, chapter 1;

11 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but  
12 not limited to administrative procurement, contracts for consulting services, and personnel actions;

13 (c) repair or maintenance of the permittee's equipment or facilities;

14 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement  
15 of environmental standards;

16 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon  
17 a given state of facts in a prescribed manner;

18 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the  
19 human environment;

20 (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative  
21 to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever  
22 is less;

23 (h) changes in an approved operating plan or reclamation plan for an activity that was previously  
24 permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire  
25 operation and there is less than 10 acres of additional disturbance; and

26 (i) changes in a permit for the purpose of retention of mine-related facilities that are valuable for  
27 postmining use."

28

29 **Section 31.** Section 85-2-123, MCA, is amended to read:

30 **"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122 and ~~85-2-124~~, all fees and

1 penalties collected under this chapter must be deposited in the water right appropriation account established in  
2 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court  
3 other than a justice's court for a violation of this chapter must be deposited in the general fund of the county  
4 where the court presides and must be disposed of in the same manner as any other penalty or fine."  
5

6 **Section 32.** Section 85-2-141, MCA, is amended to read:

7 **"85-2-141. Water leasing program.** (1) There is a water leasing program administered by the  
8 department on behalf of the state of Montana.

9 (2) The department may acquire rights to water needed for leasing under this program through  
10 appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

11 (3) Water for leasing under the water leasing program must be obtained from the following sources:

12 (a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a  
13 preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

14 (b) Fort Peck reservoir, if an agreement between the department and the federal government concerning  
15 the acquisition of water and the sharing of revenue with the state is in effect;

16 (c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail reservoir if and as long as there is an agreement  
17 between the department and the federal government concerning the acquisition of water and sharing of revenue  
18 with the state from one or more of these reservoirs; and

19 (d) any other existing or future federal reservoir:

20 (i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under  
21 85-2-231, or a final decree under 85-2-234 has been entered; and

22 (ii) for which and for so long as there is an agreement between the department and the federal  
23 government concerning the acquisition of water and the sharing of revenue with the state.

24 (4) Water may be leased for any beneficial use. The amount of water that can be leased under this  
25 program for all beneficial uses may not exceed 50,000 acre-feet.

26 (5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if  
27 the department again determines the desirability of leasing by applying the considerations in subsection (7). In  
28 making a redetermination, the department may require the completion of an environmental impact statement in  
29 accordance with subsection (6).

30 (6) The department shall require the completion of an environmental ~~impact statement~~ review under the

1 provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a  
 2 year or more and 5.5 cubic feet per second or more of water and for any other application for which an  
 3 environmental impact statement review is required by law. ~~The department shall require the completion of an~~  
 4 ~~environmental impact statement whenever the cumulative effect of more than one application for a lease would~~  
 5 ~~constitute a probable significant environmental impact.~~

6 (7) Upon application by a person to lease water, the department shall make an initial determination of  
 7 whether it is desirable for the department to lease water to the applicant. The determination of desirability must  
 8 be made solely on the following considerations:

9 ~~(a) the content of the environmental impact statement, if required;~~

10 ~~(b)~~(a) whether there is sufficient water available under the water leasing program; and

11 ~~(c)~~(b) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

12 (8) The department shall for any agreement require commercially reasonable terms and conditions,  
 13 which may include the requirement that up to 25% of the water to be leased be made available to a potential user  
 14 for any beneficial use upon payment by the user of the costs of tapping into and removing water from the  
 15 applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the  
 16 water.

17 (9) The lease of water or the use of water under a lease does not constitute a permit, as provided in  
 18 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

19 (10) For purposes of the water leasing program established in this section, it is the intent of the legislature  
 20 that the state act as a proprietor."

21

22 **Section 33.** Section 85-2-310, MCA, is amended to read:

23 **"85-2-310. Action on application for permit or change in appropriation right.** (1) The department  
 24 shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within  
 25 120 days after the last date of publication of the notice of application if no objections have been received and  
 26 within 180 days if a hearing is held or objections have been received. However, in either case, the time may be  
 27 extended upon agreement of the applicant ~~or, in those cases where an environmental impact statement must be~~  
 28 ~~prepared or in other extraordinary cases, may be extended~~ by not more than 60 days upon order of the  
 29 department. If the department orders the time extended, it shall serve a notice of the extension and the reasons  
 30 for the extension by first-class mail upon the applicant and each person who has filed an objection as provided

1 by 85-2-308.

2 (2) However, an application may not be denied or approved in a modified form or upon terms, conditions,  
3 or limitations specified by the department, unless the applicant is first granted an opportunity to be heard. If no  
4 objection is filed against the application but the department is of the opinion that the application should be denied  
5 or approved in a modified form or upon terms, conditions, or limitations specified by it, the department shall  
6 prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its  
7 opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a  
8 request within 30 days after the notice is mailed. The notice must further state that the application will be modified  
9 in a specified manner or denied unless a hearing is requested.

10 (3) The department may cease action upon an application for a permit or change in appropriation right  
11 and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide  
12 intent to appropriate water for a beneficial use. An application returned for either of these reasons must be  
13 accompanied by a statement of the reasons for which it was returned, and for a permit application there is not  
14 a right to a priority date based upon the filing of the application. Returning an application pursuant to this  
15 subsection is a final decision of the department.

16 (4) ~~For all applications filed after July 1, 1973, the~~ The department shall find that an application is not  
17 in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

18 (a) an application is not corrected and completed as required by 85-2-302;

19 (b) the appropriate filing fee is not paid; or

20 (c) the application does not document:

21 (i) a beneficial use of water;

22 (ii) the proposed place of use of all water applied for;

23 (iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a  
24 detailed project plan describing when and how much water will be put to a beneficial use. The project plan must  
25 include a reasonable timeline for the completion of the project and the actual application of the water to a  
26 beneficial use.

27 (iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how  
28 much water will be put to a beneficial use; and

29 (v) if the water applied for is to be appropriated above that which will be used solely by the applicant or  
30 if it will be marketed by the applicant to other users, information detailing:

- 1 (A) each person who will use the water and the amount of water each person will use;
- 2 (B) the proposed place of use of all water by each person;
- 3 (C) the nature of the relationship between the applicant and each person using the water; and
- 4 (D) each firm contractual agreement for the specified amount of water for each person using the water;
- 5 or
- 6 ~~\_\_\_\_\_ (d) the appropriate environmental impact statement costs or fees, if any, are not paid as required by~~
- 7 ~~85-2-124."~~

8

9 **Section 34.** Section 85-2-311, MCA, is amended to read:

10 **"85-2-311. Criteria for issuance of permit.** (1) A permit may be issued under this part prior to the

11 adjudication of existing water rights in a source of supply. In a permit proceeding under this part there is no

12 presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication

13 of existing water rights pursuant to this chapter. In making a determination under this section, the department may

14 not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water

15 reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant

16 proves by a preponderance of evidence that the following criteria are met:

17 (a) (i) there is water physically available at the proposed point of diversion in the amount that the

18 applicant seeks to appropriate; and

19 (ii) water can reasonably be considered legally available during the period in which the applicant seeks

20 to appropriate, in the amount requested, based on the records of the department and other evidence provided

21 to the department. Legal availability is determined using an analysis involving the following factors:

- 22 (A) identification of physical water availability;
- 23 (B) identification of existing legal demands on the source of supply throughout the area of potential
- 24 impact by the proposed use; and
- 25 (C) analysis of the evidence on physical water availability and the existing legal demands, including but
- 26 not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal
- 27 demands on the supply of water.

28 (b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state

29 water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined

30 based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the

1 applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

2 (c) the proposed means of diversion, construction, and operation of the appropriation works are  
3 adequate;

4 (d) the proposed use of water is a beneficial use;

5 (e) the applicant has a possessory interest, or the written consent of the person with the possessory  
6 interest, in the property where the water is to be put to beneficial use;

7 (f) the water quality of a prior appropriator will not be adversely affected;

8 (g) the proposed use will be substantially in accordance with the classification of water set for the source  
9 of supply pursuant to 75-5-301(1); and

10 (h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
11 with Title 75, chapter 5, part 4, will not be adversely affected.

12 (2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met  
13 only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
14 satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met.  
15 For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality  
16 district established under Title 7, chapter 13, part 45, may file a valid objection.

17 (3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a  
18 year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence  
19 that:

20 (a) the criteria in subsection (1) are met;

21 (b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the  
22 following:

23 (i) the existing demands on the state water supply, as well as projected demands, such as reservations  
24 of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum  
25 streamflows for the protection of existing water rights and aquatic life;

26 (ii) the benefits to the applicant and the state;

27 (iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

28 (iv) the availability and feasibility of using low-quality water for the purpose for which application has been  
29 made;

30 (v) the effects on private property rights by any creation of or contribution to saline seep; and

1 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
2 by the department pursuant project sponsor to Title 75, chapter 1, or Title 75, chapter 20.

3 (4) (a) The state of Montana has long recognized the importance of conserving its public waters and the  
4 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
5 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in  
6 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
7 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
8 with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be  
9 met before out-of-state use may occur.

10 (b) The department may not issue a permit for the appropriation of water for withdrawal and  
11 transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

12 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
13 subsection (1) or (3) are met;

14 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

15 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens  
16 of Montana.

17 (c) In determining whether the applicant has proved by clear and convincing evidence that the  
18 requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

19 (i) whether there are present or projected water shortages within the state of Montana;

20 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water  
21 shortages within the state of Montana;

22 (iii) the supply and sources of water available to the applicant in the state where the applicant intends to  
23 use the water; and

24 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
25 water.

26 (d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the  
27 applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and  
28 use of water.

29 (5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other  
30 evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other

1 evidence, including but not limited to water supply data, field reports, and other information developed by the  
2 applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and  
3 other specific field studies.

4 (6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion,  
5 impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or  
6 employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation,  
7 diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally  
8 or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or  
9 control waters within the boundaries of this state except in accordance with this section.

10 (7) The department may adopt rules to implement the provisions of this section."  
11

12 **Section 35.** Section 85-2-316, MCA, is amended to read:

13 **"85-2-316. State reservation of waters.** (1) The state, any political subdivision or agency of the state,  
14 or the United States or any agency of the United States may apply to the department to acquire a state water  
15 reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water  
16 throughout the year or at periods or for a length of time that the department designates.

17 (2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as  
18 described by the following basins:

- 19 (i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;  
20 (ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;  
21 (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;  
22 (iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;  
23 (v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and  
24 (vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

25 (b) A state water reservation may be made for an existing or future beneficial use outside the basin  
26 where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and  
27 the proposed use would occur in a basin designated in subsection (2)(a).

28 (3) Upon receiving a correct and complete (3) application, the department shall proceed in accordance with  
29 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to  
30 reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting

1 investigations, and making records incurred in acting upon the application to reserve water, except the cost of  
2 salaries of the department's personnel, must be paid by the applicant. ~~In addition, a reasonable proportion of the~~  
3 ~~department's cost of preparing an environmental impact statement must be paid by the applicant unless waived~~  
4 ~~by the department upon a showing of good cause by the applicant.~~

5 (4) (a) The department may not adopt an order reserving water unless the applicant establishes to the  
6 satisfaction of the department by a preponderance of evidence:

- 7 (i) the purpose of the reservation;  
8 (ii) the need for the reservation;  
9 (iii) the amount of water necessary for the purpose of the reservation;  
10 (iv) that the reservation is in the public interest.

11 (b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order  
12 reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and  
13 convincing evidence that:

- 14 (i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and  
15 (ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens  
16 of Montana.

17 (c) In determining whether the applicant has proved by clear and convincing evidence that the  
18 requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

- 19 (i) whether there are present or projected water shortages within the state of Montana;  
20 (ii) whether the water that is the subject of the application could feasibly be transported to alleviate water  
21 shortages within the state of Montana;  
22 (iii) the supply and sources of water available to the applicant in the state where the applicant intends to  
23 use the water; and  
24 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
25 water.

26 (d) When applying for a state water reservation to withdraw and transport water for use outside the state,  
27 the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease,  
28 use, and reservation of water.

29 (5) If the purpose of the state water reservation requires construction of a storage or diversion facility,  
30 the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will

1 be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in  
2 accordance with an established plan.

3 (6) The department shall limit any state water reservations after May 9, 1979, for maintenance of  
4 minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of  
5 the average annual flow of record on gauged streams. Ungauged streams may be allocated at the discretion of  
6 the department.

7 (7) After the adoption of an order reserving waters, the department may reject an application and refuse  
8 a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it  
9 considers necessary for the protection of the objectives of the reservation.

10 (8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall  
11 make application for the use with the district, and the district, upon approval of the application, shall inform the  
12 department of the approved use and issue the applicant an authorization for the use. The department shall  
13 maintain records of all uses of water reserved to conservation districts and be responsible, when requested by  
14 the districts, for rendering technical and administrative assistance within the department's staffing and budgeting  
15 limitations in the preparation and processing of the applications for the conservation districts. The department  
16 shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within  
17 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan  
18 identifying projects for using a district's reservation as long as the conservation district makes a good faith effort,  
19 within its staffing and budget limitations, to develop a plan.

20 (b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the  
21 conservation district. The notification must contain a certified statement by a person with experience in the design,  
22 construction, or operation of project works for agricultural purposes describing how the reserved water was put  
23 to use. The department or the district may then inspect the appropriation to determine if it has been completed  
24 in substantial accordance with the authorization.

25 (9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the  
26 relative priority of the reservation to permits with a later priority of appropriation must be determined according  
27 to this subsection (9), as follows:

28 (a) A state water reservation under this section has a priority of appropriation dating from the filing with  
29 the department of a notice of intention to apply for a state water reservation in a basin in which no other notice  
30 of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the

1 applicant is seeking a state water reservation.

2 (b) Upon receiving a notice of intention to apply for a state water reservation, the department shall  
3 identify all potential state water reservation applicants in the basin specified in the notice and notify each potential  
4 applicant of the opportunity to submit an application and to receive a state water reservation with the priority of  
5 appropriation as described in subsection (9)(a).

6 (c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a  
7 correct and complete state water reservation application within 1 year after the filing of the notice of intention to  
8 apply. Upon a showing of good cause, the department may extend the time for preparing the application.

9 (d) The department may by order subordinate a state water reservation to a permit or a certificate for  
10 ground water development issued pursuant to this part if:

11 (i) the permit application or the notice of completion of ground water development was accepted by the  
12 department before the date of the order granting the reservation;

13 (ii) the effect of subordinating the reservation to one or more permits or certificates for ground water  
14 development does not interfere substantially with the purpose of the reservation; and

15 (iii) in the case of a certificate for ground water development, the reservant consents to the subordination.

16 (e) The department shall by order establish the relative priority of state water reservations approved  
17 under this section that have the same day of priority. A state water reservation may not adversely affect any rights  
18 in existence at that time.

19 (10) The department shall, periodically but at least once every 10 years, review existing state water  
20 reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water  
21 reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped  
22 water made available as a result of a revocation or modification under this subsection is available for  
23 appropriation by others pursuant to this part.

24 (11) The department may modify an existing or future order originally adopted to reserve water for the  
25 purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation  
26 or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water  
27 reserved pursuant to a state water reservation may be made by the department following notice and hearing if  
28 the department finds that all or part of the reservation is not required for its purpose and that the need for the  
29 reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation  
30 of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its

1 priority date despite reallocation to a different entity for a different use. The department may not reallocate water  
2 reserved under this section on any stream or river more frequently than once every 5 years.

3 (12) A reservant may not make a change in a state water reservation under this section, except as  
4 permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give  
5 notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved  
6 change.

7 (13) A state water reservation may be transferred to another entity qualified to hold a reservation under  
8 subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing  
9 of a water right ownership update form with the department, together with an affidavit from the entity receiving  
10 the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to  
11 comply with the requirements of this section and the conditions of the reservation, and that the entity can meet  
12 the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an  
13 appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

14 (14) This section does not vest the department with the authority to alter a water right that is not a state  
15 water reservation.

16 (15) The department shall undertake a program to educate the public, other state agencies, and political  
17 subdivisions of the state as to the benefits of the state water reservation process and the procedures to be  
18 followed to secure the reservation of water. The department shall provide technical assistance to other state  
19 agencies and political subdivisions in applying for reservations under this section.

20 (16) Water reserved under this section is not subject to the state water leasing program established under  
21 85-2-141."

22

23 **Section 36.** Section 85-2-402, MCA, is amended to read:

24 **"85-2-402. (Temporary) Changes in appropriation rights.** (1) The right to make a change subject to  
25 the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and  
26 confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in  
27 appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source  
28 of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section,  
29 an appropriator may not make a change in an appropriation right without the approval of the department or, if  
30 applicable, of the legislature. An applicant shall submit a correct and complete application.

1           (2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a  
2 change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria  
3 are met:

4           (a) The proposed change in appropriation right will not adversely affect the use of the existing water  
5 rights of other persons or other perfected or planned uses or developments for which a permit or certificate has  
6 been issued or for which a state water reservation has been issued under part 3.

7           (b) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right  
8 authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the  
9 proposed means of diversion, construction, and operation of the appropriation works are adequate.

10          (c) The proposed use of water is a beneficial use.

11          (d) Except for a lease authorization pursuant to 85-2-436 or a temporary change in appropriation right  
12 authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person  
13 with the possessory interest, in the property where the water is to be put to beneficial use.

14          (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will  
15 salvage at least the amount of water asserted by the applicant.

16          (f) The water quality of an appropriator will not be adversely affected.

17          (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
18 with Title 75, chapter 5, part 4, will not be adversely affected.

19          (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only  
20 if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
21 satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

22          (4) The department may not approve a change in purpose of use or place of use of an appropriation of  
23 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator  
24 proves by a preponderance of evidence that:

25           (a) the criteria in subsection (2) are met; and

26           (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a  
27 consideration of:

28           (i) the existing demands on the state water supply, as well as projected demands for water for future  
29 beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the  
30 protection of existing water rights and aquatic life;

- 1 (ii) the benefits to the applicant and the state;
- 2 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;
- 3 (iv) the availability and feasibility of using low-quality water for the purpose for which application has been  
4 made;
- 5 (v) the effects on private property rights by any creation of or contribution to saline seep; and
- 6 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
7 by the ~~department~~ project sponsor pursuant to Title 75, chapter 1, or Title 75, chapter 20.
- 8 (5) The department may not approve a change in purpose of use or place of use for a diversion that  
9 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed  
10 unless:
- 11 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in  
12 subsections (2) and (4) are met; and
- 13 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then  
14 petitions the legislature and the legislature affirms the decision of the department after one or more public  
15 hearings.
- 16 (6) The state of Montana has long recognized the importance of conserving its public waters and the  
17 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
18 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in  
19 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
20 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
21 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before  
22 out-of-state use may occur:
- 23 (a) The department and, if applicable, the legislature may not approve a change in appropriation right  
24 for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator  
25 proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public  
26 hearings that:
- 27 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
28 subsection (2) or (4) are met;
- 29 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and
- 30 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens

1 of Montana.

2 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
3 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
4 shall consider the following factors:

5 (i) whether there are present or projected water shortages within the state of Montana;

6 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
7 transported to alleviate water shortages within the state of Montana;

8 (iii) the supply and sources of water available to the applicant in the state where the applicant intends to  
9 use the water; and

10 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
11 water.

12 (c) When applying for a change in appropriation right to withdraw and transport water for use outside  
13 the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
14 appropriation and use of water.

15 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a  
16 year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change  
17 in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its  
18 approval or denial of the proposed change. The department shall provide notice and may hold one or more  
19 hearings upon any other proposed change in appropriation right if it determines that the proposed change might  
20 adversely affect the rights of other persons.

21 (8) The department or the legislature, if applicable, may approve a change in appropriation right subject  
22 to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this  
23 section, including limitations on the time for completion of the change. The department may extend time limits  
24 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

25 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
26 appropriator shall notify the department that the appropriation has been completed. The notification must contain  
27 a certified statement by a person with experience in the design, construction, or operation of appropriation works  
28 describing how the appropriation was completed.

29 (10) If a change in appropriation right is not completed as approved by the department or legislature or  
30 if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department

1 may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval  
2 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify  
3 or revoke the change approval.

4 (11) The original of a change approval issued by the department must be sent to the applicant, and a  
5 duplicate must be kept in the office of the department in Helena.

6 (12) A person holding an issued permit or change approval that has not been perfected may change the  
7 place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant  
8 to this section.

9 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent,  
10 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change  
11 in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent,  
12 officer, or employee, attempt to change an appropriation right except in accordance with this section.

13 (14) The department may adopt rules to implement the provisions of this section.

14 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
15 approval of the department if:

16 (i) the appropriation right is for:

17 (A) ground water outside the boundaries of a controlled ground water area; or

18 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the  
19 order declaring the controlled ground water area do not restrict such a change;

20 (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be  
21 used;

22 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of  
23 the well being replaced and do not exceed:

24 (A) 450 gallons a minute for a municipal well; or

25 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

26 (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated  
27 from the well being replaced; and

28 (v) a timely, correct and complete notice of replacement well is submitted to the department as provided  
29 in subsection (15)(b).

30 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the

1 appropriator shall file a notice of replacement well with the department on a form provided by the department.

2 (ii) The department shall review the notice of replacement well and shall issue an authorization of a  
3 change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct  
4 and complete.

5 (iii) The department may not issue an authorization of a change in appropriation right until a correct and  
6 complete notice of replacement well has been filed with the department. The department shall return a defective  
7 notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a  
8 corrected and completed notice of replacement well within 30 days of notification of defects or within a further  
9 time as the department may allow, not to exceed 6 months.

10 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

11 (A) cease appropriation of water from the replacement well pending approval by the department; and

12 (B) submit an application for a change in appropriation right to the department pursuant to subsections  
13 (1) through (3).

14 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
15 85-2-404.

16 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
17 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to  
18 37-43-202.

19 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right  
20 that meets the requirements of subsection (15)(a).

21 (16) (a) An appropriator may change an appropriation right without the prior approval of the department  
22 for the purpose of constructing a redundant water supply well in a public water supply system, as defined in  
23 75-6-102, if the redundant water supply well:

24 (i) withdraws water from the same ground water source as the original well; and

25 (ii) is required by a state or federal agency.

26 (b) The priority date of the redundant water supply well is the same as the priority date of the original  
27 well. Only one well may be used at one time.

28 (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of  
29 construction of the well with the department on a form provided by the department. The department may return  
30 a defective notice of construction to the appropriator for correction and completion.

1 (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets  
2 the requirements of this section. (Terminates June 30, 2009--sec. 9, Ch. 123, L. 1999.)

3 **85-2-402. (Effective July 1, 2009) Changes in appropriation rights.** (1) The right to make a change  
4 subject to the provisions of this section in an existing water right, a permit, or a state water reservation is  
5 recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant  
6 for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights  
7 in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16)  
8 of this section, an appropriator may not make a change in an appropriation right without the approval of the  
9 department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

10 (2) Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a  
11 change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria  
12 are met:

13 (a) The proposed change in appropriation right will not adversely affect the use of the existing water  
14 rights of other persons or other perfected or planned uses or developments for which a permit or certificate has  
15 been issued or for which a state water reservation has been issued under part 3.

16 (b) Except for a temporary change in appropriation right authorization to maintain or enhance  
17 streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction,  
18 and operation of the appropriation works are adequate.

19 (c) The proposed use of water is a beneficial use.

20 (d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant  
21 has a possessory interest, or the written consent of the person with the possessory interest, in the property where  
22 the water is to be put to beneficial use.

23 (e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will  
24 salvage at least the amount of water asserted by the applicant.

25 (f) The water quality of an appropriator will not be adversely affected.

26 (g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance  
27 with Title 75, chapter 5, part 4, will not be adversely affected.

28 (3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only  
29 if a valid objection is filed. A valid objection must contain substantial credible information establishing to the  
30 satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

1 (4) The department may not approve a change in purpose of use or place of use of an appropriation of  
2 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator  
3 proves by a preponderance of evidence that:

4 (a) the criteria in subsection (2) are met; and

5 (b) the proposed change is a reasonable use. A finding of reasonable use must be based on a  
6 consideration of:

7 (i) the existing demands on the state water supply, as well as projected demands for water for future  
8 beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the  
9 protection of existing water rights and aquatic life;

10 (ii) the benefits to the applicant and the state;

11 (iii) the effects on the quantity and quality of water for existing uses in the source of supply;

12 (iv) the availability and feasibility of using low-quality water for the purpose for which application has been  
13 made;

14 (v) the effects on private property rights by any creation of or contribution to saline seep; and

15 (vi) the probable significant adverse environmental impacts of the proposed use of water as determined  
16 by the ~~department~~ project sponsor pursuant to Title 75, chapter 1, or Title 75, chapter 20.

17 (5) The department may not approve a change in purpose of use or place of use for a diversion that  
18 results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed  
19 unless:

20 (a) the applicant proves by clear and convincing evidence and the department finds that the criteria in  
21 subsections (2) and (4) are met; and

22 (b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then  
23 petitions the legislature and the legislature affirms the decision of the department after one or more public  
24 hearings.

25 (6) The state of Montana has long recognized the importance of conserving its public waters and the  
26 necessity to maintain adequate water supplies for the state's water requirements, including requirements for  
27 federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in  
28 trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes  
29 that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict  
30 with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before

1 out-of-state use may occur:

2 (a) The department and, if applicable, the legislature may not approve a change in appropriation right  
3 for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator  
4 proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public  
5 hearings that:

6 (i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of  
7 subsection (2) or (4) are met;

8 (ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

9 (iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens  
10 of Montana.

11 (b) In determining whether the appropriator has proved by clear and convincing evidence that the  
12 requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature  
13 shall consider the following factors:

14 (i) whether there are present or projected water shortages within the state of Montana;

15 (ii) whether the water that is the subject of the proposed change in appropriation might feasibly be  
16 transported to alleviate water shortages within the state of Montana;

17 (iii) the supply and sources of water available to the applicant in the state where the applicant intends to  
18 use the water; and

19 (iv) the demands placed on the applicant's supply in the state where the applicant intends to use the  
20 water.

21 (c) When applying for a change in appropriation right to withdraw and transport water for use outside  
22 the state, the applicant shall submit to and comply with the laws of the state of Montana governing the  
23 appropriation and use of water.

24 (7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a  
25 year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change  
26 in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its  
27 approval or denial of the proposed change. The department shall provide notice and may hold one or more  
28 hearings upon any other proposed change in appropriation right if it determines that the proposed change might  
29 adversely affect the rights of other persons.

30 (8) The department or the legislature, if applicable, may approve a change in appropriation right subject

1 to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this  
2 section, including limitations on the time for completion of the change. The department may extend time limits  
3 specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

4 (9) Upon actual application of water to the proposed beneficial use within the time allowed, the  
5 appropriator shall notify the department that the appropriation has been completed. The notification must contain  
6 a certified statement by a person with experience in the design, construction, or operation of appropriation works  
7 describing how the appropriation was completed.

8 (10) If a change in appropriation right is not completed as approved by the department or legislature or  
9 if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department  
10 may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval  
11 should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify  
12 or revoke the change approval.

13 (11) The original of a change approval issued by the department must be sent to the applicant, and a  
14 duplicate must be kept in the office of the department in Helena.

15 (12) A person holding an issued permit or change approval that has not been perfected may change the  
16 place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant  
17 to this section.

18 (13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent,  
19 agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change  
20 in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent,  
21 officer, or employee, attempt to change an appropriation right except in accordance with this section.

22 (14) The department may adopt rules to implement the provisions of this section.

23 (15) (a) An appropriator may change an appropriation right for a replacement well without the prior  
24 approval of the department if:

25 (i) the appropriation right is for:

26 (A) ground water outside the boundaries of a controlled ground water area; or

27 (B) ground water inside the boundaries of a controlled ground water area and if the provisions of the  
28 order declaring the controlled ground water area do not restrict such a change;

29 (ii) the change in appropriation right is to replace an existing well and the existing well will no longer be  
30 used;

1 (iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of  
2 the well being replaced and do not exceed:

3 (A) 450 gallons a minute for a municipal well; or

4 (B) 35 gallons a minute and 10 acre-feet a year for all other wells;

5 (iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated  
6 from the well being replaced; and

7 (v) a timely, correct and complete notice of replacement well is submitted to the department as provided  
8 in subsection (15)(b).

9 (b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the  
10 appropriator shall file a notice of replacement well with the department on a form provided by the department.

11 (ii) The department shall review the notice of replacement well and shall issue an authorization of a  
12 change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct  
13 and complete.

14 (iii) The department may not issue an authorization of a change in appropriation right until a correct and  
15 complete notice of replacement well has been filed with the department. The department shall return a defective  
16 notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a  
17 corrected and completed notice of replacement well within 30 days of notification of defects or within a further  
18 time as the department may allow, not to exceed 6 months.

19 (iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

20 (A) cease appropriation of water from the replacement well pending approval by the department; and

21 (B) submit an application for a change in appropriation right to the department pursuant to subsections  
22 (1) through (3).

23 (c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under  
24 85-2-404.

25 (d) For each well that is replaced under this subsection (15), the appropriator shall follow the well  
26 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to  
27 37-43-202.

28 (e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right  
29 that meets the requirements of subsection (15)(a).

30 (16) (a) An appropriator may change an appropriation right without the prior approval of the department

1 for the purpose of constructing a redundant water supply well in a public water supply system, as defined in  
2 75-6-102, if the redundant water supply well:

3 (i) withdraws water from the same ground water source as the original well; and

4 (ii) is required by a state or federal agency.

5 (b) The priority date of the redundant water supply well is the same as the priority date of the original  
6 well. Only one well may be used at one time.

7 (c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of  
8 construction of the well with the department on a form provided by the department. The department may return  
9 a defective notice of construction to the appropriator for correction and completion.

10 (d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets  
11 the requirements of this section."

12

13 **Section 37.** Section 85-3-202, MCA, is amended to read:

14 **"85-3-202. Department to review applications.** (1) The department shall review all applications for  
15 weather modification activities. The ~~department~~ project sponsor shall prepare a report and an environmental  
16 impact statement pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the  
17 criteria applicable to issuance of a permit in 85-3-206. Prior to ~~preparing~~ the preparation of the report, the  
18 department shall conduct at least one public meeting in the area affected by the proposed weather modification  
19 activity. The department's actual costs of conducting the public meeting, ~~preparing the report, and preparing the~~  
20 ~~environmental impact statement~~ must be paid by the applicant.

21 (2) The department may provide by rule for exempting from the license and permit requirements of this  
22 chapter:

23 (a) research, development, and experiments by state and federal agencies, institutions of higher learning,  
24 and bona fide nonprofit research organizations and their agents;

25 (b) laboratory research and experiments;

26 (c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

27 (d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or  
28 preventing precipitation or hail."

29

30 **Section 38.** Section 90-6-307, MCA, is amended to read:

1           **"90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral  
2 development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and  
3 the board an impact plan describing the economic impact the large-scale mineral development will have on local  
4 government units and shall file proof of the submission to the counties with the board. Whenever an  
5 environmental impact statement on the permit application is prepared under 75-1-201, the ~~lead agency~~ project  
6 sponsor shall cooperate to the fullest extent practicable with the affected local government units to eliminate  
7 duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the  
8 submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral  
9 developer and the affected local government units shall ensure that the impact plan includes:

10           (a) a timetable for development, including the opening date of the development and the estimated closing  
11 date;

12           (b) the estimated number of persons coming into the impacted area as a result of the development;

13           (c) the increased capital and operating cost to local government units for providing services that can be  
14 expected as a result of the development;

15           (d) the financial or other assistance that the developer will give to local government units to meet the  
16 increased need for services.

17           (2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net  
18 operating cost to local government units that will be a result of the development, as identified in the impact plan,  
19 whether from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds,  
20 as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within  
21 which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the  
22 developer guarantees that the amount to be provided from these sources will be paid.

23           (3) Upon request of the governing body of an affected unit of local government, the mineral developer,  
24 prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare  
25 for and evaluate the impact plan. The governing body of the affected county shall contract with the developer to  
26 obtain the requested financial assistance for each unit of local government within the county. Any disbursements  
27 to a unit of local government under this subsection must be credited against future tax liabilities, if any.

28           (4) The governing body of the county where the fiscal impacts on local government units are forecasted  
29 in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer,  
30 conduct a public hearing on the impact plan.

1 (5) An affected local government unit that has not been identified in an impact plan submitted to the  
2 board as being likely to experience increased capital and operating costs for providing services that can be  
3 expected as a result of the development may object to the impact plan under the provisions of this section if the  
4 local government unit clearly demonstrates that it is likely to experience increased capital and operating costs  
5 from the mineral development.

6 (6) An affected local government unit shall, within 90 days after receipt of the impact plan from the  
7 developer, notify the board in writing if that local government unit objects to the impact plan, specifying the  
8 reasons for the objection. During the 90-day period, an affected local government unit may petition for one 30-day  
9 extension by submitting a written request to the board stating the need and justification for the extension. The  
10 board shall grant the extension unless it finds that there is no reasonable basis for the request. If an objection  
11 is not received within the 90-day period or any extension of the period, the impact plan is approved without any  
12 review by the board. An approved plan is binding and may only be altered under the amendment provisions of  
13 90-6-311.

14 (7) If objections are received from a local government unit, the board shall, within 10 days, notify the  
15 developer and forward a copy of the local government unit's objections to the developer. The local government  
16 unit and the developer have 30 days, or a longer period if both the local government unit and the developer  
17 request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a  
18 hearing on the validity of the objections. The hearing must be held in the affected county or, if objections are  
19 received from local government units in more than one county, must be held in the county which, in the board's  
20 judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the  
21 conduct of the hearing. The impact plan filed by the developer does not carry a presumption of correctness at  
22 the hearing.

23 (8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the  
24 impact plan that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact  
25 plan, as amended, must be served by the board upon all parties. A local government unit or the developer, if  
26 aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in  
27 the district court in and for the judicial district in which the hearing was held.

28 (9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with  
29 a written guaranty that the developer will meet the increased costs of public services and facilities as specified  
30 in the approved impact plan and according to the time schedule contained in the approved impact plan.

1 (10) The developer may make payments as specified in the approved impact plan directly to a local  
2 government unit or to the board. The governing body of a local government unit receiving payments shall deposit  
3 the payments into an impact fund. The developer and the affected governing body shall each issue to the board  
4 written verification of each payment and its intended use in compliance with the impact plan. The board shall  
5 deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

6 (11) The board shall notify the department of environmental quality of its receipt of the written guaranty  
7 of payment and of any failure of the developer to comply with this section.

8 (12) Upon receipt of evidence that an affected local government unit identified in the approved impact  
9 plan is providing or is preparing to provide an additional service or facility provided for in the approved impact  
10 plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government  
11 unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact  
12 account identified in the plan as the increased cost to the local government unit of providing that public service  
13 or facility.

14 (13) If it is determined that an objection filed by an affected local government unit under subsections (5)  
15 and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent  
16 jurisdiction, the local government unit must be awarded and the developer shall pay reasonable costs and  
17 attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and  
18 costs awarded are in addition to any amounts paid by the developer under this part.

19 (14) Upon a determination by the department of environmental quality that a permittee under 82-4-335  
20 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver  
21 of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it  
22 has provided notice and opportunity for hearing to the permittee and to all affected local government units. The  
23 board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked  
24 as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their  
25 payrolls from the date of the waiver by 75 or more persons. However, any revocation must be requested by an  
26 affected local government unit, and notice and opportunity for hearing must be given to the permittee and all  
27 affected local government units. The board shall notify the board of land commissioners of any waiver that has  
28 been revoked.

29 (15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails  
30 to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall

1 certify to the board of land commissioners that the failure to comply has occurred and shall certify when a  
2 permittee who has previously failed to comply comes into compliance."

3  
4 NEW SECTION. Section 39. Repealer. Sections 75-1-202, 75-1-203, 75-1-204, 75-1-205, 75-1-206,  
5 75-1-207, 75-1-208, and 85-2-124, MCA, are repealed.

6  
7 NEW SECTION. Section 40. Saving clause. [This act] does not affect rights and duties that matured,  
8 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

9  
10 NEW SECTION. Section 41. Effective date. [This act] is effective on passage and approval.

11  
12 NEW SECTION. Section 42. Applicability. [This act] applies to environmental reviews initiated after  
13 [the effective date of this act].

14 - END -